



Montana Legislative History

Chapter: 313 Session L: 2019

Bill Number: 225 Senate

Checklist of Bill History

History and Final Status Sheet	x
Introduced Bill	X
Fiscal Note	N/A
Third Reading Bill	X
Final Version of Bill	X

House

Committee:
Judiciary

Hearing Date(s):

[April 3, 2019](#)

[April 4, 2019](#)

(Executive
Action)

Senate

Committee:
Judiciary

Hearing Date(s):

[February 13, 2019](#)

[February 19, 2019](#) (Executive Action)

Conference Committee

Hearing Date(s): n/a

Conference Committee Report:

Compiler Notes

Compiled by: sg

Date: 2/23/2024

Notes:

Bill Draft Number: LC1026

Bill Type - Number: SB 225

Short Title: Generally revise probate laws

Primary Sponsor: Steve Fitzpatrick (R) SD 10

Chapter Number: 313

Bill Actions - Current Bill Progress: Became Law

Bill Action Count: 52

Action - Most Recent First	Date	Votes Yes	Votes No	Committee
Chapter Number Assigned	05/08/2019			
(S) Signed by Governor	05/07/2019			
(S) Transmitted to Governor	04/29/2019			
(H) Signed by Speaker	04/26/2019			
(S) Signed by President	04/26/2019			
(C) Printed - Enrolled Version Available	04/17/2019			
(S) Returned from Enrolling	04/17/2019			
(S) Sent to Enrolling	04/13/2019			
(S) 3rd Reading Passed as Amended by House	04/13/2019	50	0	
(S) Scheduled for 3rd Reading	04/13/2019			
(S) 2nd Reading House Amendments Concurred	04/12/2019	50	0	
(S) Scheduled for 2nd Reading	04/12/2019			
(S) Scheduled for 2nd Reading	04/11/2019			
(H) Returned to Senate with Amendments	04/08/2019			
(H) 3rd Reading Concurred	04/08/2019	92	5	
(H) Scheduled for 3rd Reading	04/08/2019			
(H) 2nd Reading Concurred	04/05/2019	94	6	
(H) Scheduled for 2nd Reading	04/05/2019			
(C) Printed - New Version Available	04/04/2019			
(H) Committee Report--Bill Concurred as Amended	04/04/2019			(H) Judiciary
(H) Committee Executive Action--Bill Concurred as Amended	04/04/2019	16	3	(H) Judiciary
(H) Hearing	04/03/2019			(H) Judiciary
(H) Hearing Canceled	03/22/2019			(H) Judiciary
(H) First Reading	02/26/2019			(H) Judiciary
(H) Referred to Committee	02/26/2019			(H) Judiciary
(S) Transmitted to House	02/22/2019			
(S) 3rd Reading Passed	02/22/2019	43	7	
(S) Scheduled for 3rd Reading	02/22/2019			
(S) 2nd Reading Passed	02/21/2019	43	7	
(S) Scheduled for 2nd Reading	02/21/2019			
(C) Printed - New Version Available	02/19/2019			
(S) Committee Report--Bill Passed as Amended	02/19/2019			(S) Judiciary
(S) Committee Executive Action--Bill Passed as Amended	02/19/2019	8	2	(S) Judiciary

(S) Hearing	02/13/2019	(S) Judiciary
(S) Referred to Committee	02/07/2019	(S) Judiciary
(S) First Reading	02/07/2019	
(C) Introduced Bill Text Available Electronically	02/06/2019	
(S) Introduced	02/06/2019	
(C) Draft Delivered to Requester	02/06/2019	
(C) Draft Ready for Delivery	01/25/2019	
(C) Executive Director Final Review	01/25/2019	
(C) Draft in Assembly	01/24/2019	
(C) Executive Director Review	01/24/2019	
(C) Bill Draft Text Available Electronically	01/24/2019	
(C) Draft in Final Drafter Review	01/24/2019	
(C) Draft in Input/Proofing	01/23/2019	
(C) Draft to Drafter - Edit Review [KWK]	01/23/2019	
(C) Draft in Edit	01/21/2019	
(C) Draft in Legal Review	01/21/2019	
(C) Draft to Requester for Review	01/21/2019	
(C) Draft to Requester for Review	01/19/2019	
(C) Draft Request Received	11/07/2018	

Sponsor, etc.

Sponsor, etc.	Last Name/Organization	First Name Mi
Requester	Fitzpatrick	Steve
Drafter	Everts	Todd
Primary Sponsor	Fitzpatrick	Steve

Subjects

Description	Revenue/Approp.	Vote Majority Req.	Subject Code
Estates and Trusts		Simple	EST

Additional Bill Information

Fiscal Note Probable: No

Preintroduction Required: N

Session Law Ch. Number: 313

DEADLINE

Category: General Bills

Transmittal Date: 03/01/2019

Return (with 2nd house amendments) Date: 04/08/2019

Section Effective Dates

Section(s) Effective Date Date Qualified
All Sections 01-OCT-19



AN ACT GENERALLY REVISING THE PROVISIONS OF THE UNIFORM PROBATE CODE; REVISING ESTATES, TRUSTS, AND FIDUCIARY RELATIONSHIP LAWS; ADOPTING THE UNIFORM DISCLAIMER OF PROPERTY INTERESTS ACT; ADOPTING THE UNIFORM REAL PROPERTY TRANSFER ON DEATH ACT; AMENDING SECTIONS 72-1-103, 72-1-201, 72-1-208, 72-1-302, 72-1-303, 72-2-112, 72-2-114, 72-2-116, 72-2-118, 72-2-223, 72-2-225, 72-2-228, 72-2-230, 72-2-412, 72-2-413, 72-2-415, 72-2-613, 72-2-616, 72-2-712, 72-2-716, 72-2-717, 72-2-813, 72-2-814, 72-3-102, 72-3-112, 72-3-122, 72-3-131, 72-3-201, 72-3-202, 72-3-203, 72-3-401, 72-3-404, 72-3-502, 72-3-504, 72-3-514, 72-3-607, 72-3-611, 72-3-613, 72-3-618, 72-3-631, 72-3-803, 72-3-815, 72-3-917, 72-3-1012, 72-3-1013, 72-4-203, 72-6-111, 72-7-401, AND 72-15-301, MCA; AND REPEALING SECTIONS 72-2-215, 72-2-221, 72-2-222, 72-2-224, 72-2-226, 72-2-227, 72-2-811, 72-3-113, 72-3-309, 72-3-633, 72-6-121, AND 72-6-123, MCA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Purpose -- rule of construction. (1) This code shall be liberally construed and applied to promote its underlying purposes and policies.

(2) The underlying purposes and policies of this code are to:

- (a) simplify and clarify the law concerning the affairs of decedents, missing persons, protected persons, minors, and incapacitated persons;
- (b) discover and make effective the intent of a decedent in distribution of the decedent's property;
- (c) promote a speedy and efficient system for liquidating the estate of the decedent and making distribution to the decedent's successors;
- (d) facilitate use and enforcement of certain trusts; and
- (e) make uniform the law among the various jurisdictions.

Section 2. Severability. If any provision of this code or the application of this code to any person or circumstances is held invalid, the invalidity may not affect other provisions or applications of the code which can

be given effect without the invalid provision or application, and to this end the provisions of this code are declared to be severable.

Section 3. Section 72-1-103, MCA, is amended to read:

"72-1-103. General definitions. Subject to additional definitions contained in the subsequent chapters that are applicable to specific chapters, parts, or sections and unless the context otherwise requires, in chapters 1 through 6, the following definitions apply:

(1) "Agent" includes an attorney-in-fact under a durable or nondurable power of attorney, an individual authorized to make decisions concerning another's health care, and an individual authorized to make decisions for another under a natural death act.

(2) "Application" means a written request to the clerk for an order of informal probate or appointment under chapter 3, part 2.

(3) "Beneficiary", as it relates to:

(a) a trust beneficiary, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer;

(b) a charitable trust, includes any person entitled to enforce the trust;

(c) a beneficiary of a beneficiary designation, refers to a beneficiary of:

(i) an account with POD designation or a security registered in beneficiary form (TOD); or

(ii) any other nonprobate transfer at death; and

(d) a beneficiary designated in a governing instrument, includes a grantee of a deed, a devisee, a trust beneficiary, a beneficiary of a beneficiary designation, a donee, and a person in whose favor a power of attorney or a power held in any individual, fiduciary, or representative capacity is exercised.

(4) "Beneficiary designation" refers to a governing instrument naming a beneficiary of:

(a) an account with POD designation or a security registered in beneficiary form (TOD); or

(b) any other nonprobate transfer at death.

(5) "Child" includes an individual entitled to take as a child under chapters 1 through 5 by intestate succession from the parent whose relationship is involved and excludes a person who is only a stepchild, a foster child, a grandchild, or any more remote descendant.

(6) (a) "Claims", in respect to estates of decedents and protected persons, includes liabilities of the

decedent or protected person, whether arising in contract, in tort, or otherwise, and liabilities of the estate that arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration.

(b) The term does not include estate taxes or demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.

(7) "Clerk" or "clerk of court" means the clerk of the district court.

(8) "Conservator" means a person who is appointed by a court to manage the estate of a protected person.

(9) "Court" means the district court in this state having jurisdiction in matters relating to the affairs of decedents.

(10) "Descendant" of an individual means all of the individual's descendants of all generations, with the relationship of parent and child at each generation being determined by the definition of child and parent contained in this section code.

(11) "Devise" when used as a noun means a testamentary disposition of real or personal property and when used as a verb means to dispose of real or personal property by will.

(12) "Devisee" means a person designated in a will to receive a devise. For purposes of chapter 3, in the case of a devise to an existing trust or trustee or to a trustee or trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees.

(13) "Disability" means cause for a protective order as described by 72-5-409.

(14) "Distributee" means any person who has received property of a decedent from the decedent's personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment to distributed assets remaining in the trustee's hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For purposes of this provision, "testamentary trustee" includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

(15) "Estate" includes the property of the decedent, trust, or other person whose affairs are subject to chapters 1 through 5 as originally constituted and as it exists from time to time during administration.

(16) "Exempt property" means that property of a decedent's estate that is described in 72-2-413.

(17) "Fiduciary" includes a personal representative, guardian, conservator, and trustee.

(18) "Foreign personal representative" means a personal representative appointed by another jurisdiction.

(19) "Formal proceedings" means proceedings conducted before a judge with notice to interested persons.

(20) "Governing instrument" means a deed; will; trust; insurance or annuity policy; account with POD designation; security registered in beneficiary form (TOD); pension, profit-sharing, retirement, or similar benefit plan; instrument creating or exercising a power of appointment or a power of attorney; or dispositive, appointive, or nominative instrument of any similar type.

(21) "Guardian" means a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment but excludes one who is merely a guardian ad litem.

(22) "Heirs", except as controlled by 72-2-721, means persons, including the surviving spouse and the state, who are entitled under the statutes of intestate succession to the property of a decedent.

(23) "Incapacitated person" has the meaning provided in 72-5-101.

(24) "Informal proceedings" means proceedings conducted without notice to interested persons by the clerk of court for probate of a will or appointment of a personal representative.

(25) "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust estate or the estate of a decedent, ward, or protected person. The term also includes persons having priority for appointment as personal representative and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of and matter involved in any proceeding.

(26) "Issue" of a person means a descendant.

(27) "Joint tenants with the right of survivorship" includes co-owners of property held under circumstances that entitle one or more to the whole of the property on the death of the other or others but excludes forms of co-ownership registration in which the underlying ownership of each party is in proportion to that party's contribution.

(28) "Lease" includes an oil, gas, coal, or other mineral lease.

(29) "Letters" includes letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.

(30) "Minor" means a person who is under 18 years of age.

(31) "Mortgage" means any conveyance, agreement, or arrangement in which property is used as

security.

(32) "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of death.

(33) "Organization" means a corporation, business trust, estate, trust, partnership, joint venture, association, government or governmental subdivision or agency, or any other legal or commercial entity.

(34) "Parent" includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under chapters 1 through 5 by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent, or grandparent.

(35) "Payor" means a trustee, insurer, business entity, employer, government, governmental agency or subdivision, or any other person authorized or obligated by law or a governing instrument to make payments.

(36) "Person" means an individual, a corporation, an organization, or other legal entity.

(37) "Personal representative" includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status. "General personal representative" excludes special administrator.

(38) "Petition" means a written request to the court for an order after notice.

(39) "Proceeding" includes action at law and suit in equity.

(40) "Property" includes both real and personal property or any interest in that property and means anything that may be the subject of ownership.

(41) "Protected person" has the meaning provided in 72-5-101.

(42) "Protective proceeding" has the meaning provided in 72-5-101.

(43) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

~~(43)~~(44) "Security" includes any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; collateral trust certificate; transferable share; voting trust certificate; in general, any interest or instrument commonly known as a security; any certificate of interest or participation; or any temporary or interim certificate, receipt, or certificate of deposit for or any warrant or right to subscribe to or purchase any of the foregoing.

~~(44)~~(45) "Settlement", in reference to a decedent's estate, includes the full process of administration,

distribution, and closing.

(46) "Sign" means, with present intent to authenticate or adopt a record other than a will:

(a) to execute or adopt a tangible symbol; or

(b) to attach to or logically associate with the record an electronic symbol, sound, or process.

(45)(47) "Special administrator" means a personal representative as described by chapter 3, part 7.

(46)(48) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

(47)(49) "Successor personal representative" means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.

(48)(50) "Successors" means persons, other than creditors, who are entitled to property of a decedent under the decedent's will or chapters 1 through 5.

(49)(51) "Supervised administration" refers to the proceedings described in chapter 3, part 4.

(50)(52) "Survive" means that an individual has neither predeceased an event, including the death of another individual, nor is considered to have predeceased an event under 72-2-114 or 72-2-712. The term includes its derivatives, such as "survives", "survived", "survivor", and "surviving".

(51)(53) "Testacy proceeding" means a proceeding to establish a will or determine intestacy.

(52)(54) "Testator" includes an individual of either sex.

(53)(55) "Trust" includes an express trust, private or charitable, with additions to the trust, wherever and however created. The term also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. The term excludes other constructive trusts and excludes resulting trusts; conservatorships; personal representatives; trust accounts as defined in 72-6-111 and Title 72, chapter 6, parts 2 and 3; custodial arrangements pursuant to chapter 26; business trusts providing for certificates to be issued to beneficiaries; common trust funds; voting trusts; security arrangements; liquidation trusts; trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind; and any arrangement under which a person is nominee or escrowee for another.

(54)(56) "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by court.

(55)(57) "Ward" means an individual described in 72-5-101.

(56)(58) "Will" includes codicil and any testamentary instrument that merely appoints an executor,

revokes or revises another will, nominates a guardian, or expressly excludes or limits the right of an individual or class to succeed to property of the decedent passing by intestate succession."

Section 4. Section 72-1-201, MCA, is amended to read:

"72-1-201. Territorial application. Except as otherwise provided in this code, this code applies to:

(1) the affairs and estates of decedents, missing persons, and persons to be protected in this state;
 (2) the property of nonresidents located in this state or property coming into the control of a fiduciary who is subject to the laws of this state; ~~and~~

(3) incapacitated persons and minors in this state; and

(4) survivorship and related accounts in this state."

Section 5. Section 72-1-208, MCA, is amended to read:

"72-1-208. Jury trial. (1) If duly demanded, a party is entitled to trial by jury in a formal testacy proceeding, ~~a formal proceeding for determination of heirship, and any other proceeding as may be provided for by law~~ and any proceeding in which any controverted question of fact arises as to which any party has a constitutional right to trial by jury.

(2) If there is no right to trial by jury under subsection (1) or the right is waived, the court in its discretion may call a jury to decide any issue of fact, in which case the verdict is advisory only."

Section 6. Section 72-1-302, MCA, is amended to read:

"72-1-302. Waiver of notice. A person, including a guardian ad litem, conservator, or other fiduciary, may waive notice by a writing signed by the person or the person's attorney and filed in the proceeding. A person for whom a guardianship or other protective order is sought, a ward, or a protected person may not waive notice."

Section 7. Section 72-1-303, MCA, is amended to read:

"72-1-303. Pleadings -- when orders or notice binding one binds another -- representation. In formal proceedings involving trusts or estates of decedents, minors, protected persons, or incapacitated persons and in judicially supervised settlements, the following apply:

(1) Interests to be affected must be described in pleadings that give reasonable information to owners

by name or class, by reference to the instrument creating the interests, or in other appropriate manner.

(2) Persons are bound by orders binding others in the following cases:

(a) Orders binding the sole holder or all coholders of a power of revocation or a presently exercisable general power of appointment, including one in the form of a power of amendment, bind other persons to the extent their interests, as objects, takers in default, or otherwise, are subject to the power.

(b) (i) To the extent there is no conflict of interest between them or among persons represented, orders binding a:

(A) conservator bind the person whose estate the conservator controls;

(B) guardian bind the ward if a conservator of the ward's estate has not been appointed;

(C) trustee bind beneficiaries of the trust in proceedings to probate a will establishing or adding to a trust, to review the acts or accounts of a prior fiduciary, and in proceedings involving creditors or other third parties; **and**

(D) personal representative bind persons interested in the undistributed assets of a decedent's estate in actions or proceedings by or against the estate; and

(E) a sole holder or all co-holders of a general testamentary power of appointment binds other persons to the extent their interests as objects, takers in default, or otherwise are subject to the power.

(ii) If there is no conflict of interest and a conservator or guardian has not been appointed, a parent may represent the parent's minor child.

(c) An unborn or unascertained person who is not otherwise represented is bound by an order to the extent the person's interest is adequately represented by another party having a substantially identical interest in the proceeding.

(3) Notice is required as follows:

(a) Notice as prescribed by 72-1-301 must be given to every interested person or to one who can bind an interested person as described in subsection (2)(a) or (2)(b). Notice may be given both to a person and to another who may bind the person.

(b) Notice is given to unborn or unascertained persons, who are not represented under subsection (2)(a) or (2)(b), by giving notice to all known persons whose interests in the proceedings are substantially identical to those of the unborn or unascertained persons.

(4) At any point in a proceeding, a court may appoint a guardian ad litem to represent the interest of a

minor, an incapacitated, unborn, or unascertained person, or a person whose identity or address is unknown if the court determines that representation of the interest otherwise would be inadequate. If not precluded by conflict of interests, a guardian ad litem may be appointed to represent several persons or interests. The court shall set out its reasons for appointing a guardian ad litem as a part of the record of the proceeding."

Section 8. Section 72-2-112, MCA, is amended to read:

"72-2-112. Share of spouse. The intestate share of a decedent's surviving spouse is:

- (1) the entire intestate estate if:
 - (a) no descendant or parent of the decedent survives the decedent; or
 - (b) all of the decedent's surviving descendants are also descendants of the surviving spouse and there is no other descendant of the surviving spouse who survives the decedent;
- (2) the first ~~\$200,000~~ \$300,000, plus three-fourths of any balance of the intestate estate, if no descendant of the decedent survives the decedent but a parent of the decedent survives the decedent;
- (3) the first ~~\$150,000~~ \$225,000, plus one-half of any balance of the intestate estate, if all of the decedent's surviving descendants are also descendants of the surviving spouse and the surviving spouse has one or more surviving descendants who are not descendants of the decedent;
- (4) the first ~~\$100,000~~ \$150,000, plus one-half of any balance of the intestate estate, if one or more of the decedent's surviving descendants are not descendants of the surviving spouse."

Section 9. Section 72-2-114, MCA, is amended to read:

"72-2-114. Requirement that heir survive decedent for 120 hours. An individual who fails to survive the decedent by 120 hours is ~~considered~~ deemed to have predeceased the decedent for purposes of homestead allowance, exempt property, and intestate succession, and the decedent's heirs are determined accordingly. If it is not established by clear and convincing evidence that an individual who would otherwise be an heir survived the decedent by 120 hours, it is ~~considered~~ deemed that the individual failed to survive for the required period. This section is not to be applied if its application would result in a taking of intestate estate by the state under 72-2-115."

Section 10. Section 72-2-116, MCA, is amended to read:

"72-2-116. Representation. (1) As used in this section, the following definitions apply:

(a) "Deceased descendant", "deceased parent", or "deceased grandparent" means a descendant, parent, or grandparent who either predeceased the decedent or is ~~considered~~ deemed to have predeceased the decedent under 72-2-114.

(b) "Surviving descendant" means a descendant who neither predeceased the decedent nor is ~~considered~~ deemed to have predeceased the decedent under 72-2-114.

(2) (a) If, under 72-2-113(1)(a), a decedent's intestate estate or a part of the intestate estate passes by representation to the decedent's descendants, the estate or part of the estate is divided into as many equal shares as there are:

(i) surviving descendants in the generation nearest to the decedent that contains one or more surviving descendants; and

(ii) deceased descendants in the same generation who left surviving descendants, if any.

(b) Each surviving descendant in the nearest generation is allocated one share. The share of each deceased descendant in the same generation as the surviving descendant is divided in the same manner, with the subdivision repeating at each succeeding generation until the property is fully allocated among surviving descendants.

(3) (a) If, under 72-2-113(1)(c) or (1)(d), a decedent's intestate estate or a part of the intestate estate passes by representation to the descendants of the decedent's deceased parents or either of them or to the descendants of the decedent's deceased paternal or maternal grandparents or either of them, the estate or part of the estate is divided into as many equal shares as there are:

(i) surviving descendants in the generation nearest the deceased parents or either of them or nearest the deceased grandparents or either of them that contains one or more surviving descendants; and

(ii) deceased descendants in the same generation who left surviving descendants, if any.

(b) Each surviving descendant in the nearest generation is allocated one share. The share of each deceased descendant in the same generation as the surviving descendant is divided in the same manner, with the subdivision repeating at each succeeding generation until the property is fully allocated among surviving descendants."

Section 11. Section 72-2-118, MCA, is amended to read:

"72-2-118. Afterborn heirs. An individual in gestation at a particular time is treated as living at that time if the individual lives 120 hours or more after birth. If it is not established by clear and convincing evidence that an individual in gestation at the decedent's death lived 120 hours after birth, it is deemed that the individual failed to survive for the required period."

Section 12. Parent barred from inheriting in certain circumstances. (1) A parent is barred from inheriting from or through a child of the parent if:

(a) the parent's parental rights were terminated and the parent-child relationship was not judicially reestablished; or

(b) the child died before reaching 18 years of age and there is clear and convincing evidence that immediately before the child's death the parental rights of the parent could have been terminated under law of this state other than this code on the basis of nonsupport, abandonment, abuse, neglect, or other actions or inactions of the parent toward the child.

(2) For the purpose of intestate succession from or through the deceased child, a parent who is barred from inheriting under this section is treated as if the parent predeceased the child.

Section 13. Definitions. In [sections 13 through 22]:

(1) As used in sections other than [section 17], "decedent's nonprobate transfers to others" means the amounts that are included in the augmented estate under [section 17].

(2) "Fractional interest in property held in joint tenancy with the right of survivorship," whether the fractional interest is unilaterally severable or not, means the fraction, the numerator of which is one and the denominator of which, if the decedent was a joint tenant, is one plus the number of joint tenants who survive the decedent and which, if the decedent was not a joint tenant, is the number of joint tenants.

(3) "Marriage," as it relates to a transfer by the decedent during marriage, means any marriage of the decedent to the decedent's surviving spouse.

(4) "Nonadverse party" means a person who does not have a substantial beneficial interest in the trust or other property arrangement that would be adversely affected by the exercise or nonexercise of the power that person possesses respecting the trust or other property arrangement. A person having a general power of appointment over property is deemed to have a beneficial interest in the property.

(5) "Power" or "power of appointment" includes a power to designate the beneficiary of a beneficiary designation.

(6) "Presently exercisable general power of appointment" means a power of appointment under which, at the time in question, the decedent, whether or not the decedent then had the capacity to exercise the power, held a power to create a present or future interest in the decedent, the decedent's creditors, the decedent's estate, or creditors of the decedent's estate, and includes a power to revoke or invade the principal of a trust or other property arrangement.

(7) "Property" includes values subject to a beneficiary designation.

(8) "Right to income" includes a right to payments under a commercial or private annuity, an annuity trust, a unitrust, or a similar arrangement.

(9) "Transfer," as it relates to a transfer by or of the decedent, includes:

- (a) an exercise or release of a presently exercisable general power of appointment held by the decedent;
- (b) a lapse at death of a presently exercisable general power of appointment held by the decedent; and
- (c) an exercise, release, or lapse of a general power of appointment that the decedent created in the decedent and of a power described in [section 17(2)(b)] that the decedent conferred on a nonadverse party.

Section 14. Elective share. (1) The surviving spouse of a decedent who dies domiciled in this state has a right of election, under the limitations and conditions stated in [sections 13 through 22], to take an elective-share amount equal to 50% of the value of the marital-property portion of the augmented estate.

(2) If the sum of the amounts described in [sections 19 and 21(1)(a)], and that part of the elective-share amount payable from the decedent's net probate estate and nonprobate transfers to others under [section 21(3) and (4)] is less than \$75,000, the surviving spouse is entitled to a supplemental elective-share amount equal to \$75,000, minus the sum of the amounts described in those sections. The supplemental elective-share amount is payable from the decedent's net probate estate and from recipients of the decedent's nonprobate transfers to others in the order of priority set forth in [section 21(3) and (4)].

(3) If the right of election is exercised by or on behalf of the surviving spouse, the surviving spouse's homestead allowance, exempt property, and family allowance, if any, are not charged against but are in addition to the elective-share and supplemental elective-share amounts.

(4) The right, if any, of the surviving spouse of a decedent who dies domiciled outside this state to take

an elective share in property in this state is governed by the law of the decedent's domicile at death.

Section 15. Composition of the augmented estate. (1) Subject to [section 20], the value of the augmented estate, to the extent provided in [sections 16, 17, 18, and 19], consists of the sum of the values of all property, whether real or personal; movable or immovable, tangible or intangible, wherever situated, that constitute:

- (a) the decedent's net probate estate;
- (b) the decedent's nonprobate transfers to others;
- (c) the decedent's nonprobate transfers to the surviving spouse; and
- (d) the surviving spouse's property and nonprobate transfers to others.

(2) The value of the marital-property portion of the augmented estate consists of the sum of the values of the four components of the augmented estate as determined under subsection (1) multiplied by the following percentage:

If the decedent and the spouse were married to each other:	The percentage is:
Less than 1 year	3%
1 year but less than 2 years	6%
2 years but less than 3 years	12%
3 years but less than 4 years	18%
4 years but less than 5 years	24%
5 years but less than 6 years	30%
6 years but less than 7 years	36%
7 years but less than 8 years	42%
8 years but less than 9 years	48%
9 years but less than 10 years	54%
10 years but less than 11 years	60%
11 years but less than 12 years	68%
12 years but less than 13 years	76%
13 years but less than 14 years	84%

14 years but less than 15 years	92%
15 years or more	100%

Section 16. Decedent's net probate estate. The value of the augmented estate includes the value of the decedent's probate estate, reduced by funeral and administration expenses, homestead allowance, family allowances, exempt property, and enforceable claims.

Section 17. Decedent's nonprobate transfers to others. The value of the augmented estate includes the value of the decedent's nonprobate transfers to others, not included under [section 16], of any of the following types, in the amount provided respectively for each type of transfer:

(1) Property owned or owned in substance by the decedent immediately before death that passed outside probate at the decedent's death. Property included under this category consists of:

(a) Property over which the decedent alone, immediately before death, held a presently exercisable general power of appointment. The amount included is the value of the property subject to the power, to the extent the property passed at the decedent's death, by exercise, release, lapse, in default, or otherwise, to or for the benefit of any person other than the decedent's estate or surviving spouse.

(b) The decedent's fractional interest in property held by the decedent in joint tenancy with the right of survivorship. The amount included is the value of the decedent's fractional interest, to the extent the fractional interest passed by right of survivorship at the decedent's death to a surviving joint tenant other than the decedent's surviving spouse.

(c) The decedent's ownership interest in property or accounts held in POD, TOD, or co-ownership registration with the right of survivorship. The amount included is the value of the decedent's ownership interest, to the extent the decedent's ownership interest passed at the decedent's death to or for the benefit of any person other than the decedent's estate or surviving spouse.

(2) Property transferred in any of the following forms by the decedent during marriage:

(a) Any irrevocable transfer in which the decedent retained the right to the possession or enjoyment of, or to the income from, the property if and to the extent the decedent's right terminated at or continued beyond the decedent's death. The amount included is the value of the fraction of the property to which the decedent's right related, to the extent the fraction of the property passed outside probate to or for the benefit of any person

other than the decedent's estate or surviving spouse.

(b) Any transfer in which the decedent created a power over income or property, exercisable by the decedent alone or in conjunction with any other person, or exercisable by a nonadverse party, to or for the benefit of the decedent, creditors of the decedent, the decedent's estate, or creditors of the decedent's estate. The amount included with respect to a power over property is the value of the property subject to the power, and the amount included with respect to a power over income is the value of the property that produces or produced the income, to the extent the power in either case was exercisable at the decedent's death to or for the benefit of any person other than the decedent's surviving spouse or to the extent the property passed at the decedent's death, by exercise, release, lapse, in default, or otherwise, to or for the benefit of any person other than the decedent's estate or surviving spouse. If the power is a power over both income and property and the preceding sentence produces different amounts, the amount included is the greater amount.

(3) Property that passed during marriage and during the 2 year period next preceding the decedent's death as a result of a transfer by the decedent if the transfer was of any of the following types:

(a) Any property that passed as a result of the termination of a right or interest in, or power over, property that would have been included in the augmented estate under subsection (1)(a), (1)(b), or (1)(c), or under subsection (2), if the right, interest, or power had not terminated until the decedent's death. The amount included is the value of the property that would have been included under those subsections if the property were valued at the time the right, interest, or power terminated, and is included only to the extent the property passed upon termination to or for the benefit of any person other than the decedent or the decedent's estate, spouse, or surviving spouse. As used in this subsection (3)(a), "termination," with respect to a right or interest in property, occurs when the right or interest terminated by the terms of the governing instrument or the decedent transferred or relinquished the right or interest, and, with respect to a power over property, occurs when the power terminated by exercise, release, lapse, default, or otherwise, but, with respect to a power described in subsection (1)(a), "termination" occurs when the power terminated by exercise or release, but not otherwise.

(b) Any transfer of property, to the extent not otherwise included in the augmented estate, made to or for the benefit of a person other than the decedent's surviving spouse. The amount included is the value of the transferred property to the extent the transfers to any one donee in either of the 2 years exceeded the amount excludable from taxable gifts under 26 U.S.C. 2503(b) or its successor on the date next preceding the date of the decedent's death.

Section 18. Decedent's nonprobate transfers to surviving spouse. Excluding property passing to the surviving spouse under the federal social security system, the value of the augmented estate includes the value of the decedent's nonprobate transfers to the decedent's surviving spouse, which consist of all property that passed outside probate at the decedent's death from the decedent to the surviving spouse by reason of the decedent's death, including:

- (1) the decedent's fractional interest in property held as a joint tenant with the right of survivorship, to the extent that the decedent's fractional interest passed to the surviving spouse as surviving joint tenant;
- (2) the decedent's ownership interest in property or accounts held in co-ownership registration with the right of survivorship, to the extent the decedent's ownership interest passed to the surviving spouse as surviving co-owner; and
- (3) all other property that would have been included in the augmented estate under [section 17(1) or (2)] had it passed to or for the benefit of a person other than the decedent's spouse, surviving spouse, the decedent, or the decedent's creditors, estate, or estate creditors.

Section 19. Surviving spouse's property and nonprobate transfers to others. (1) Except to the extent included in the augmented estate under [sections 16 or 18], the value of the augmented estate includes the value of:

- (a) property that was owned by the decedent's surviving spouse at the decedent's death, including:
 - (i) the surviving spouse's fractional interest in property held in joint tenancy with the right of survivorship;
 - (ii) the surviving spouse's ownership interest in property or accounts held in co-ownership registration with the right of survivorship; and
 - (iii) property that passed to the surviving spouse by reason of the decedent's death, but not including the spouse's right to homestead allowance, family allowance, exempt property, or payments under the federal social security system; and
- (b) property that would have been included in the surviving spouse's nonprobate transfers to others, other than the spouse's fractional and ownership interests included under subsection (1)(a)(i) or (1)(a)(ii), had the spouse been the decedent.

- (2) Property included under this section is valued at the decedent's death, taking the fact that the

decedent predeceased the spouse into account, but, for purposes of subsection (1)(a)(i) and (1)(a)(ii), the values of the spouse's fractional and ownership interests are determined immediately before the decedent's death if the decedent was then a joint tenant or a co-owner of the property or accounts.

(3) The value of property included under this section is reduced by enforceable claims against the surviving spouse.

Section 20. Exclusions, valuation, and overlapping application. (1) The value of any property is excluded from the decedent's nonprobate transfers to others:

(a) to the extent the decedent received adequate and full consideration in money or money's worth for a transfer of the property;

(b) if the property was transferred with the written joinder of, or if the transfer was consented to in writing before or after the transfer by, the surviving spouse; or

(c) if the property is life insurance or accident insurance payable to persons other than the decedent's surviving spouse or the decedent's estate.

(2) The value of property:

(a) included in the augmented estate under [sections 17, 18, or 19] is reduced in each category by enforceable claims against the included property; and

(b) includes the commuted value of any present or future interest and the commuted value of amounts payable under any trust, life insurance settlement option, annuity contract, public or private pension, disability compensation, death benefit or retirement plan, or any similar arrangement, exclusive of the federal social security system. The commuted value of life and term interests in income, annuity, or unitrust amount must be determined in accordance with U.S. treasury regulations for internal revenue purposes in effect at the time of the decedent's death.

(3) In case of overlapping application to the same property of [sections 17, 18, or 19], the property is included in the augmented estate under the provision yielding the greatest value, and under only one overlapping provision if they all yield the same value.

Section 21. Sources from which elective share payable. (1) In a proceeding for an elective share, the following are applied first to satisfy the elective-share amount and to reduce or eliminate any contributions

due from the decedent's probate estate and recipients of the decedent's nonprobate transfers to others:

(a) amounts included in the augmented estate under [section 16] which pass or have passed to the surviving spouse by testate or intestate succession and amounts included in the augmented estate under [section 18];

(b) amounts included in the augmented estate that would have passed to the spouse but were disclaimed; and

(c) the marital-property portion of amounts included in the augmented estate under [section 19].

(2) The marital-property portion under subsection (1)(c) is computed by multiplying the value of the amounts included in the augmented estate under [section 19] by the percentage of the augmented estate set forth in the schedule in [section 15(2)] appropriate to the length of time the spouse and the decedent were married to each other.

(3) If, after the application of subsection (1), the elective-share amount is not fully satisfied, or the surviving spouse is entitled to a supplemental elective-share amount, amounts included in the decedent's net probate estate, other than assets passing to the surviving spouse by testate or intestate succession, and in the decedent's nonprobate transfers to others under [section 17(1) and (2)] are applied first to satisfy the unsatisfied balance of the elective-share amount or the supplemental elective-share amount. The decedent's net probate estate and that portion of the decedent's nonprobate transfers to others are so applied that liability for the unsatisfied balance of the elective-share amount or for the supplemental elective-share amount is apportioned among the recipients of the decedent's net probate estate and of that portion of the decedent's nonprobate transfers to others in proportion to the value of their interests.

(4) If, after the application of subsections (1) and (3), the elective-share or supplemental elective-share amount is not fully satisfied, the remaining portion of the decedent's nonprobate transfers to others is so applied that liability for the unsatisfied balance of the elective-share or supplemental elective-share amount is apportioned among the recipients of the remaining portion of the decedent's nonprobate transfers to others in proportion to the value of their interests therein.

(5) The unsatisfied balance of the elective-share or supplemental elective-share amount as determined under subsection (3) or (4) is treated as a general pecuniary devise for purposes of 72-3-913.

Section 22. Effect of premarital or marital agreement right to elect and of other rights. (1) In this

section, "agreement" includes a subsequent agreement that affirms, modifies, or waives an earlier agreement.

(2) The right of election of a surviving spouse and the rights of the surviving spouse to homestead allowance, exempt property, and family allowance, or any of them, may be affirmed, modified, or waived wholly or partially, only by a written agreement signed by the surviving spouse, before or after the marriage. The agreement is enforceable without consideration.

(3) An agreement under subsection (2) is not enforceable if the surviving spouse proves that:

(a) the agreement was involuntary or the result of duress;

(b) the surviving spouse did not have access to independent legal representation under subsection (4);

(c) unless the surviving spouse had independent legal representation when the agreement was executed, the agreement did not include an explanation in plain language of the rights under subsection (2) being affirmed, modified, or waived; or

(d) before signing the agreement, the surviving spouse did not receive adequate financial disclosure under subsection (5).

(4) A surviving spouse had access to independent legal representation if:

(a) before signing an agreement, the surviving spouse had a reasonable time to:

(i) decide whether to retain a lawyer to provide independent legal representation; and

(ii) locate a lawyer to provide independent legal representation, obtain the lawyer's advice, and consider the advice provided; and

(b) the other spouse was represented by a lawyer and the surviving spouse had the financial ability to retain a lawyer or the other spouse agreed to pay the reasonable fees and expenses of independent legal representation.

(5) A surviving spouse had adequate financial disclosure under this section if the surviving spouse:

(a) received a reasonably accurate description and good-faith estimate of the value of the property, liabilities, and income of the other spouse;

(b) expressly waived, in a separate signed record, the right to financial disclosure beyond the disclosure provided; or

(c) had adequate knowledge or a reasonable basis for having adequate knowledge of the information described in subsection (5)(a).

(6) Unless an agreement under subsection (2) provides to the contrary, a waiver of "all rights," or

equivalent language, in the property or estate of a present or prospective spouse or a complete property settlement entered into after or in anticipation of separation or divorce is a waiver of all rights of elective share, homestead allowance, exempt property, and family allowance by the spouse in the property of the other spouse and a renunciation of all benefits that would otherwise pass to the renouncing spouse by intestate succession or by virtue of any will executed before the waiver or property settlement.

Section 23. Section 72-2-223, MCA, is amended to read:

"72-2-223. Right of election personal to surviving spouse -- incapacitated surviving spouse. (1)

The right of election may be exercised only by a surviving spouse who is living when the petition for the elective share is filed in the court under 72-2-225(1). If the election is not exercised by the surviving spouse personally, it may be exercised on the surviving spouse's behalf by the surviving spouse's conservator, guardian, or agent under the authority of a power of attorney.

(2) If the election is exercised on behalf of a surviving spouse who is an incapacitated person, the court shall set aside that portion of the elective-share and supplemental elective-share amounts due from the decedent's probate estate and recipients of the decedent's nonprobate transfers to others under ~~72-2-227(2)~~ and ~~(3)~~ [section 21(3) and (4)] and shall appoint a trustee to administer that property for the support of the surviving spouse. For the purposes of this subsection, an election on behalf of a surviving spouse by an agent under a durable power of attorney is presumed to be on behalf of a surviving spouse who is an incapacitated person. The trustee shall administer the trust in accordance with the following terms and such additional terms as the court determines appropriate:

(a) Expenditures of income and principal may be made in the manner, when, and to the extent that the trustee determines suitable and proper for the surviving spouse's support, without court order but with regard to other support, income, and property of the surviving spouse exclusive of benefits of medical or other forms of assistance from any state or federal government or governmental agency for which the surviving spouse qualifies on the basis of need.

(b) During the surviving spouse's incapacity, neither the surviving spouse nor anyone acting on behalf of the surviving spouse has a power to terminate the trust; but if the surviving spouse regains capacity, the surviving spouse then acquires the power to terminate the trust and acquire full ownership of the trust property free of trust by delivering to the trustee a writing signed by the surviving spouse declaring the termination.

(c) Upon the surviving spouse's death, the trustee shall transfer the unexpended trust property in the following order:

- (i) under the residuary clause, if any, of the will of the predeceased spouse against whom the elective share was taken, as if that predeceased spouse died immediately after the surviving spouse; or
- (ii) to that predeceased spouse's heirs under 72-2-721."

Section 24. Section 72-2-225, MCA, is amended to read:

"72-2-225. Proceeding for elective share -- time limit. (1) Except as provided in subsection (2), the election must be made by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective share within 9 months after the date of the decedent's death or within 6 months after the probate of the decedent's will, whichever limitation later expires. The surviving spouse shall give notice of the time and place set for hearing to persons interested in the estate and to the distributees and recipients of portions of the augmented estate whose interests will be adversely affected by the taking of the elective share. Except as provided in subsection (2), the decedent's nonprobate transfers to others described in ~~72-2-222(2)(b)~~ [section 17], is not included within the augmented estate for the purpose of computing the elective share if the petition is filed more than 9 months after the decedent's death.

(2) Within 9 months after the decedent's death, the surviving spouse may petition the court for an extension of time for making an election. If, within 9 months after the decedent's death, the spouse gives notice of the petition to all persons interested in the decedent's nonprobate transfers to others the court for cause shown by the surviving spouse may extend the time for election. If the court grants the spouse's petition for an extension, the decedent's nonprobate transfers to others described in ~~72-2-222(2)(b)~~ [section 17], is not excluded from the augmented estate for the purpose of computing the elective-share and supplemental elective-share amounts if the spouse makes an election by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective share within the time allowed by the extension.

(3) The surviving spouse may withdraw a demand for an elective share at any time before entry of a final determination by the court.

(4) After notice and hearing, the court shall determine the elective-share and supplemental elective-share amounts and shall order its payment from the assets of the augmented estate or by contribution as appears appropriate under ~~72-2-227~~ [section 21]. If it appears that a fund or property included in the augmented estate

has not come into the possession of the personal representative or has been distributed by the personal representative, the court nevertheless shall fix the liability of any person who has any interest in the fund or property or who has possession thereof, whether as trustee or otherwise. The proceeding may be maintained against fewer than all persons against whom relief could be sought, but no person is subject to contribution in any greater amount than the person would have been under ~~72-2-227~~ section 21 if relief had been secured against all persons subject to contribution.

(5) The order or judgment of the court may be enforced as necessary in suit for contribution or payment in other courts of this state or other jurisdictions."

Section 25. Section 72-2-228, MCA, is amended to read:

"72-2-228. Protection of payors and other third parties. (1) Although under ~~72-2-222~~ section 17 a payment, item of property, or other benefit is included in the decedent's nonprobate transfers to others, a payor or other third party is not liable for having made a payment or transferred an item of property or other benefit to a beneficiary designated in a governing instrument or for having taken any other action in good faith reliance on the validity of a governing instrument, upon request and satisfactory proof of the decedent's death, before the payor or other third party received written notice from the surviving spouse or spouse's representative of an intention to file a petition for the elective share or that a petition for the elective share has been filed. A payor or other third party is liable only for actions taken 2 or more business days after the payor or other third party received written notice of an intention to file a petition for the elective share or that a petition for the elective share has been filed. The written notice must indicate the name of the decedent, the date of the decedent's death, the name of the person asserting an interest, the nature of the payment or item of property or other benefit, and a statement that the spouse intends to file a petition for the elective share or that a petition for the elective share has been filed. Any form of service of notice other than that described in subsection (2) is not sufficient to impose liability on a payor or other third party for actions taken pursuant to the governing instrument.

(2) The written notice must be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Notice to a sales representative of the payor or other third party does not constitute notice to the payor or other third party. Upon receipt of written notice of intention to file a petition for the elective share or that a petition for the elective share has been filed, a payor or other third party may pay any

amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The availability of an action under this section does not prevent the payor or other third party from taking any other action authorized by law or the governing instrument. If probate proceedings have not been commenced, the payor or other third party shall file with the court a copy of the written notice received by the payor or other third party, with the payment of funds or transfer or deposit of property. The court may not charge a filing fee to the payor or other third party for the payment, transfer, or deposit. The court shall hold the funds or item of property and, upon its determination under 72-2-225(4), shall order disbursement in accordance with the determination. If no petition is filed in the court within the specified time under 72-2-225(1) or, if filed, the demand for an elective share is withdrawn under 72-2-225(3), the court shall order disbursement to the designated beneficiary. A filing fee, if any, may, in the discretion of the court, be charged upon disbursement either to the recipient or against the funds or property on deposit with the court. Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims under the governing instrument or applicable law for the value of amounts paid to or items of property transferred to or deposited with the court.

(3) Upon petition to the probate court by the beneficiary designated in a governing instrument, the court may order that all or part of the property be paid to the beneficiary in an amount and subject to conditions consistent with this section."

Section 26. Section 72-2-230, MCA, is amended to read:

"72-2-230. Personal liability of recipients. (1) Only original recipients of the decedent's nonprobate transfers to others, and the donees of the recipients of the decedent's nonprobate transfers to others, to the extent the donees have the property or its proceeds, are liable to make a proportional contribution toward satisfaction of the surviving spouse's elective-share or supplemental elective-share amount. A person liable to make contribution may choose to give up the proportional part of the decedent's nonprobate transfers to the person or to pay the value of the amount for which the person is liable.

(2) If any section or part of any section of this part is preempted by federal law with respect to a payment, an item of property, or any other benefit included in the decedent's nonprobate transfers to others, a person who, not for value, receives the payment, item of property, or other benefit is obligated to return that payment, item of

property, or benefit or is personally liable for the amount of that payment or the value of that item of property or benefit, as provided in ~~72-2-227~~ [section 21], to the person who would have been entitled to it were that section or part of that section not preempted."

Section 27. Section 72-2-412, MCA, is amended to read:

"72-2-412. Homestead allowance. A decedent's surviving spouse is entitled to a homestead allowance of ~~\$20,000~~ \$22,500. If there is no surviving spouse, each minor child and each dependent child of the decedent is entitled to a homestead allowance amounting to ~~\$20,000~~ \$22,500 divided by the number of minor and dependent children of the decedent. The homestead allowance is exempt from and has priority over all claims against the estate. Homestead allowance is in addition to any share passing to the surviving spouse or minor or dependent child by the will of the decedent unless otherwise provided, by intestate succession, or by way of elective share."

Section 28. Section 72-2-413, MCA, is amended to read:

"72-2-413. Exempt property. In addition to the homestead allowance, the decedent's surviving spouse is entitled from the estate to a value, not exceeding ~~\$10,000~~ \$15,000 in excess of any security interests therein, in household furniture, automobiles, furnishings, appliances, and personal effects. If there is no surviving spouse, the decedent's children are entitled jointly to the same value. If encumbered chattels are selected and if the value in excess of security interests, plus that of other exempt property, is less than ~~\$10,000~~ \$15,000 or if there is not ~~\$10,000~~ \$15,000 worth of exempt property in the estate, the spouse or children are entitled to other assets of the estate, if any, to the extent necessary to make up the ~~\$10,000~~ \$15,000 value. Rights to exempt property and assets needed to make up a deficiency of exempt property have priority over all claims against the estate, but the right to any assets to make up a deficiency of exempt property abates as necessary to permit earlier payment of homestead allowance and family allowance. These rights are in addition to any benefit or share passing to the surviving spouse or children by the decedent's will unless otherwise provided, by intestate succession, or by way of elective share."

Section 29. Section 72-2-415, MCA, is amended to read:

"72-2-415. Source, determination, and documentation. (1) If the estate is otherwise sufficient,

property specifically devised may not be used to satisfy rights to homestead allowance or exempt property. Subject to this restriction, the surviving spouse, guardians of minor children, or children who are adults may select property of the estate as homestead allowance and exempt property. The personal representative may make those selections if the surviving spouse, the children, or the guardians of the minor children are unable or fail to do so within a reasonable time or if there is no guardian of a minor child. The personal representative may execute an instrument or deed of distribution to establish the ownership of property taken as homestead allowance or exempt property. The personal representative may determine the family allowance in a lump sum not exceeding ~~\$18,000~~ \$27,000 or periodic installments not exceeding ~~\$1,500~~ \$2,250 per month for 1 year and may disburse funds of the estate in payment of the family allowance and any part of the homestead allowance payable in cash. The personal representative or any interested person aggrieved by any selection, determination, payment, proposed payment, or failure to act under this section may petition the court for appropriate relief, which may include a family allowance other than that which the personal representative determined or could have determined.

(2) If the right to an elective share is exercised on behalf of a surviving spouse who is an incapacitated person, the personal representative may add any unexpended portions payable under the homestead allowance, exempt property, and family allowance to the trust established under 72-2-223(2)."

Section 30. Section 72-2-613, MCA, is amended to read:

"72-2-613. Antilapse -- deceased devisee -- class gifts. (1) As used in this section, the following definitions apply:

(a) "Alternative devise" means a devise that is expressly created by the will and that under the terms of the will may take effect instead of another devise on the happening of one or more events, including survival of the testator or failure to survive the testator, whether an event is expressed in condition-precedent, condition-subsequent, or any other form. A residuary clause constitutes an alternative devise with respect to a nonresiduary devise only if the will specifically provides that, upon lapse or failure, the nonresiduary devise or nonresiduary devises in general pass under the residuary clause.

(b) "Class member" includes an individual who fails to survive the testator but who would have taken under a devise in the form of a class gift had the individual survived the testator.

(c) "Descendant of a grandparent", as used in subsection (2), means an individual who qualifies as a

descendant of a grandparent of the testator or of the donor of a power of appointment under the:

(i) rules of construction applicable to a class gift created in the testator's will if the devise or exercise of the power is in the form of a class gift; or

(ii) rules for intestate succession if the devise or exercise of the power is not in the form of a class gift.

(d) "Descendants", as used in the phrase "surviving descendants" of a deceased devisee or class member in subsections (2)(a) and (2)(b), mean the descendants of a deceased devisee or class member who would take under a class gift created in the testator's will.

~~(e)~~(e) "Devise" includes an alternative devise, a devise in the form of a class gift, and an exercise of a power of appointment.

~~(f)~~(f) "Devisee" includes:

- (i) a class member if the devise is in the form of a class gift;
- (ii) an individual or class member who was deceased at the time the testator executed the testator's will as well as an individual or class member who was then living but who failed to survive the testator; and
- (iii) an appointee under a power of appointment exercised by the testator's will.

~~(e)~~(g) "Stepchild" means a child of the surviving, deceased, or former spouse of the testator or of the donor of a power of appointment but not a child of the testator or donor.

~~(f)~~(h) "Surviving ~~devisee~~", or in the phrase "surviving ~~descendant~~ devisees" or "surviving ~~descendants~~" means ~~a devisee or a descendant~~ devisees or descendants who neither predeceased the testator nor ~~is considered~~ are deemed to have predeceased the testator under 72-2-712.

~~(g)~~(i) "Testator" includes the donee of a power of appointment if the power is exercised in the testator's will.

(2) If a devisee fails to survive the testator and is a grandparent, a descendant of a grandparent, or a stepchild of either the testator or the donor of a power of appointment exercised by the testator's will, the following apply:

(a) Except as provided in subsection (2)(d), if the devise is not in the form of a class gift and the deceased devisee leaves surviving descendants, a substitute gift is created in the devisee's surviving descendants. They take by representation the property to which the devisee would have been entitled had the devisee survived the testator.

(b) Except as provided in subsection (2)(d), if the devise is in the form of a class gift, other than a devise

to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives", or "family" or a class described by language of similar import, a substitute gift is created in the surviving descendants of any deceased devisee. The property to which the devisees would have been entitled had all of them survived the testator passes to the surviving devisees and the surviving descendants of the deceased devisees. Each surviving devisee takes the share to which the devisee would have been entitled had the deceased devisees survived the testator. Each deceased devisee's surviving descendants who are substituted for the deceased devisee take by representation the share to which the deceased devisee would have been entitled had the deceased devisee survived the testator. For purposes of this ~~subsection (b)~~ section, "deceased devisee" means a class member who failed to survive the testator and left one or more surviving descendants.

(c) For purposes of 72-2-611, words of survivorship, such as in a devise to an individual "if the individual survives me" or in a devise to "my surviving children", are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this section.

(d) If the will creates an alternative devise with respect to a devise for which a substitute gift is created by subsection (2)(a) or (2)(b), the substitute gift is superseded by the alternative devise ~~only if an expressly designated devisee of the alternative devise is entitled to take under the will; if:~~

(i) the alternative devise is in the form of a class gift and one or more members of the class is entitled to take under the will; or

(ii) the alternative devise is not in the form of a class gift and the expressly designated devisee of the alternative devise is entitled to take under the will.

(e) Unless the language creating a power of appointment expressly excludes the substitution of the descendants of an appointee for the appointee, a surviving descendant of a deceased appointee of a power of appointment may be substituted for the appointee under this section, whether or not the descendant is an object of the power.

(3) If, under subsection (2), substitute gifts are created and not superseded with respect to more than one devise and the devises are alternative devises, one to the other, the determination of which of the substitute gifts takes effect is resolved as follows:

(a) Except as provided in subsection (3)(b), the devised property passes under the primary substitute gift.

(b) If there is a younger-generation devise, the devised property passes under the younger-generation

substitute gift and not under the primary substitute gift.

(c) As used in this subsection (3), the following definitions apply:

(i) "Primary devise" means the devise that would have taken effect had all the deceased devisees of the alternative devises who left surviving descendants survived the testator.

(ii) "Primary substitute gift" means the substitute gift created with respect to the primary devise.

(iii) "Younger-generation devise" means a devise that:

(A) is to a descendant of a devisee of the primary devise;

(B) is an alternative devise with respect to the primary devise;

(C) is a devise for which a substitute gift is created; and

(D) would have taken effect had all the deceased devisees who left surviving descendants survived the testator except the deceased devisee or devisees of the primary devise.

(iv) "Younger-generation substitute gift" means the substitute gift created with respect to the younger-generation devise."

Section 31. Section 72-2-616, MCA, is amended to read:

"72-2-616. Nonademption of specific devises -- unpaid proceeds of sale, condemnation, or insurance -- sale by conservator or agent. (1) A specific devisee has the right to the specifically devised property in the testator's estate at death and:

(a) any balance of the purchase price, together with any security interest, owing from a purchaser to the testator at death by reason of sale of the property;

(b) any amount of a condemnation award for the taking of the property unpaid at death;

(c) any proceeds unpaid at death on fire or casualty insurance on or other recovery for injury to the property;

(d) property owned by the testator at death and acquired as a result of foreclosure or obtained in lieu of foreclosure of the security interest for a specifically devised obligation;

(e) real or tangible personal property owned by the testator at death that the testator acquired as a replacement for specifically devised real or tangible personal property; and

~~(f) unless the facts and circumstances indicate that ademption of the devise was intended by the testator or ademption of the devise is consistent with the testator's manifested plan of distribution, the value of the~~

~~specifically devised property to the extent the specifically devised property is not in the testator's estate at death and its value or its replacement is not covered by subsections (1)(a) through (1)(e):~~

(f) if not covered by subsections (1)(a) through (1)(e), a pecuniary devise equal to the value as of its date of disposition of other specifically devised property disposed of during the testator's lifetime but only to the extent it is established that ademption would be inconsistent with the testator's manifested plan of distribution or that at the time the will was made, the date of disposition or otherwise, the testator did not intend ademption of the devise.

(2) If specifically devised property is sold or mortgaged by a conservator or an agent acting within the authority of a durable power of attorney for an incapacitated principal or if a condemnation award, insurance proceeds, or recovery for an injury to property is paid to a conservator or an agent acting within the authority of a durable power of attorney for an incapacitated principal, the specific devisee has the right to a general pecuniary devise equal to the net sale price, the amount of the unpaid loan, the condemnation award, the insurance proceeds, or the recovery.

(3) The right of the specific devisee under subsection (2) is reduced by any right the devisee has under subsection (1).

(4) For the purposes of the references in subsection (2) to a conservator, subsection (2) does not apply if, after the sale, mortgage, condemnation, casualty, or recovery, it was adjudicated that the testator's incapacity ceased and the testator survived the adjudication by 1 year.

(5) For the purposes of the references in subsection (2) to an agent acting within the authority of a durable power of attorney for an incapacitated principal:

- (a) "incapacitated principal" means a principal who is an incapacitated person;
- (b) no adjudication of incapacity before death is necessary; and
- (c) the acts of an agent within the authority of a durable power of attorney are presumed to be for an incapacitated principal."

Section 32. Section 72-2-712, MCA, is amended to read:

"72-2-712. Requirement of survival by 120 hours. (1) For the purposes of chapters 1 through 5, except as provided in subsection (4), an individual who is not established by clear and convincing evidence to have survived an event, including the death of another individual, by 120 hours is ~~considered~~ deemed to have

predeceased the event.

(2) Except as provided in subsection (4), for purposes of a provision of a governing instrument that relates to an individual surviving an event, including the death of another individual, an individual who is not established by clear and convincing evidence to have survived the event by 120 hours is ~~considered~~ deemed to have predeceased the event.

(3) (a) Except as provided in subsection (4), if:

(i) it is not established by clear and convincing evidence that one of two co-owners with right of survivorship survived the other co-owner by 120 hours, one-half of the property passes as if one had survived by 120 hours and one-half as if the other had survived by 120 hours; and

(ii) there are more than two co-owners and it is not established by clear and convincing evidence that at least one of them survived the others by 120 hours, the property passes in the proportion that one bears to the whole number of co-owners.

(b) For the purposes of this subsection (3), "co-owners with right of survivorship" includes joint tenants, tenants by the entireties, and other co-owners of property or accounts held under circumstances that entitle one or more to the whole of the property or account on the death of the other or others.

(4) Survival by 120 hours is not required if:

(a) the governing instrument contains language dealing explicitly with simultaneous deaths or deaths in a common disaster and that language is operable under the facts of the case;

(b) the governing instrument expressly indicates that an individual is not required to survive an event, including the death of another individual, by any specified period or expressly requires the individual to survive the event by a specified period. However, survival of the event or the specified period must be established by clear and convincing evidence.

(c) the imposition of a 120-hour requirement of survival would cause a nonvested property interest or a power of appointment to fail to qualify for validity under 72-2-1002(1)(a), (2)(a), or (3)(a) or to become invalid under 72-2-1002(1)(b), (2)(b), or (3)(b); however, survival must be established by clear and convincing evidence; or

(d) the application of a 120-hour requirement of survival to multiple governing instruments would result in an unintended failure or duplication of a disposition. However, survival must be established by clear and convincing evidence.

(5) (a) A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument who, under this section, is not entitled to the payment or item of property, or for having taken any other action in good faith reliance on the beneficiary's apparent entitlement under the terms of the governing instrument, before the payor or other third party received written notice of a claimed lack of entitlement under this section. A payor or other third party is liable for a payment made or other action taken after the payor or other third party received written notice of a claimed lack of entitlement under this section.

(b) Written notice of a claimed lack of entitlement under subsection (5)(a) must be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of a claimed lack of entitlement under this section, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement in accordance with the determination. Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

(6) (a) A person who purchases property for value and without notice or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation is neither obligated under this section to return the payment, item of property, or benefit nor liable under this section for the amount of the payment or the value of the item of property or benefit. However, a person who, not for value, receives a payment, item of property, or other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.

(b) If this section or any part of this section is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this section, a person who, not for value, receives the payment, item of property, or other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item

of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted."

Section 33. Section 72-2-716, MCA, is amended to read:

"72-2-716. Life insurance -- retirement plan -- account with POD designation -- transfer-on-death registration -- deceased beneficiary. (1) As used in this section, the following definitions apply:

(a) "Alternative beneficiary designation" means a beneficiary designation that is expressly created by the governing instrument and that under the terms of the governing instrument may take effect instead of another beneficiary designation on the happening of one or more events, including survival of the decedent or failure to survive the decedent, whether an event is expressed in condition-precedent, condition-subsequent, or any other form.

(b) "Beneficiary" means the beneficiary of a beneficiary designation under which the beneficiary must survive the decedent and includes:

(i) a class member if the beneficiary designation is in the form of a class gift; and

(ii) an individual or class member who was deceased at the time the beneficiary designation was executed as well as an individual or class member who was then living but who failed to survive the decedent, but excludes a joint tenant of a joint tenancy with the right of survivorship and a party to a joint and survivorship account.

(c) "Beneficiary designation" includes an alternative beneficiary designation and a beneficiary designation in the form of a class gift.

(d) "Class member" includes an individual who fails to survive the decedent but who would have taken under a beneficiary designation in the form of a class gift had the individual survived the decedent.

(e) "Descendant of a grandparent", as used in subsection (2), means an individual who qualifies as a descendant of a grandparent of the decedent under the:

(i) rules of construction applicable to a class gift created in the decedent's beneficiary designation if the beneficiary designation is in the form of a class gift; or

(ii) rules for intestate succession if the beneficiary designation is not in the form of a class gift.

(f) "Descendants", as used in the phrase "surviving descendants" of a deceased beneficiary or class member in subsections (2)(a) and (2)(b), mean the descendants of a deceased beneficiary or class member who

would take under a class gift created in the beneficiary designation.

~~(e)(g)~~ "Stepchild" means a child of the decedent's surviving, deceased, or former spouse but not a child of the decedent.

~~(f)(h) "Surviving beneficiary" or "surviving descendant" means a beneficiary or a descendant~~ "Surviving" in the phrase or "surviving beneficiaries" or "surviving descendants", means beneficiaries or descendants who neither predeceased the decedent nor ~~is considered~~ are deemed to have predeceased the decedent under 72-2-712.

(2) If a beneficiary fails to survive the decedent and is a grandparent, a descendant of a grandparent, or a stepchild of the decedent, the following ~~provisions~~ apply:

(a) Except as provided in subsection (2)(d), if the beneficiary designation is not in the form of a class gift and the deceased beneficiary leaves surviving descendants, a substitute gift is created in the beneficiary's surviving descendants. They take by representation the property to which the beneficiary would have been entitled had the beneficiary survived the decedent.

(b) Except as provided in subsection (2)(d), if the beneficiary designation is in the form of a class gift, other than a beneficiary designation to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives", or "family" or a class described by language of similar import, a substitute gift is created in the surviving descendants of any deceased beneficiary. The property to which the beneficiaries would have been entitled had all of them survived the decedent passes to the surviving beneficiaries and the surviving descendants of the deceased beneficiaries. Each surviving beneficiary takes the share to which the surviving beneficiary would have been entitled had the deceased beneficiaries survived the decedent. Each deceased beneficiary's surviving descendants who are substituted for the deceased beneficiary take by representation the share to which the deceased beneficiary would have been entitled had the deceased beneficiary survived the decedent. For purposes of this subsection (b), "deceased beneficiary" means a class member who failed to survive the decedent and left one or more surviving descendants.

(c) For the purposes of 72-2-711, words of survivorship, such as in a beneficiary designation to an individual "if the individual survives me" or in a beneficiary designation to "my surviving children", are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this section.

(d) If a governing instrument creates an alternative beneficiary designation with respect to a beneficiary designation for which a substitute gift is created by subsection (2)(a) or (2)(b), the substitute gift is superseded

by the alternative beneficiary designation ~~only if an expressly designated beneficiary of the alternative beneficiary designation is entitled to take~~; if:

(i) the alternative beneficiary designation is in the form of a class gift and one or more members of the class is entitled to take; or

(ii) the alternative beneficiary designation is not in the form of a class gift and the expressly designated beneficiary of the alternative beneficiary designation is entitled to take.

(3) If, under subsection (2), substitute gifts are created and not superseded with respect to more than one beneficiary designation and the beneficiary designations are alternative beneficiary designations, one to the other, the determination of which of the substitute gifts takes effect is resolved as follows:

(a) Except as provided in subsection (3)(b), the property passes under the primary substitute gift.

(b) If there is a younger-generation beneficiary designation, the property passes under the younger-generation substitute gift and not under the primary substitute gift.

(c) As used in this subsection (3), the following definitions apply:

(i) "Primary beneficiary designation" means the beneficiary designation that would have taken effect had all the deceased beneficiaries of the alternative beneficiary designations who left surviving descendants survived the decedent.

(ii) "Primary substitute gift" means the substitute gift created with respect to the primary beneficiary designation.

(iii) "Younger-generation beneficiary designation" means a beneficiary designation that:

(A) is to a descendant of a beneficiary of the primary beneficiary designation;

(B) is an alternative beneficiary designation with respect to the primary beneficiary designation;

(C) is a beneficiary designation for which a substitute gift is created; and

(D) would have taken effect had all the deceased beneficiaries who left surviving descendants survived the decedent except the deceased beneficiary or beneficiaries of the primary beneficiary designation.

(iv) "Younger-generation substitute gift" means the substitute gift created with respect to the younger-generation beneficiary designation.

(4) (a) A payor is protected from liability in making payments under the terms of the beneficiary designation until the payor has received written notice of a claim to a substitute gift under this section. Payment made before the receipt of written notice of a claim to a substitute gift under this section discharges the payor,

but not the recipient, from all claims for the amounts paid. A payor is liable for a payment made after the payor has received written notice of the claim. A recipient is liable for a payment received, whether or not written notice of the claim is given.

(b) The written notice of the claim must be mailed to the payor's main office or home by certified mail, return receipt requested, or served upon the payor in the same manner as a summons in a civil action. Upon receipt of written notice of the claim, a payor may pay any amount owed by it to the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds and, upon its determination under this section, shall order disbursement in accordance with the determination. Payment made to the court discharges the payor from all claims for the amounts paid.

(5) (a) A person who purchases property for value and without notice or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation is neither obligated under this section to return the payment, item of property, or benefit nor liable under this section for the amount of the payment or the value of the item of property or benefit. However, a person who, not for value, receives a payment, item of property, or other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.

(b) If this section or any part of this section is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this section, a person who, not for value, receives the payment, item of property, or other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted."

Section 34. Section 72-2-717, MCA, is amended to read:

"72-2-717. Survivorship with respect to future interests under terms of trust -- substitute takers.

(1) As used in this section, the following definitions apply:

(a) "Alternative future interest" means an expressly created future interest that may take effect in

possession or enjoyment instead of another future interest on the happening of one or more events, including survival of an event or failure to survive an event, whether an event is expressed in condition-precedent, condition-subsequent, or any other form. A residuary clause in a will does not create an alternative future interest with respect to a future interest created in a nonresiduary devise in the will, whether or not the will specifically provides that lapsed or failed devises are to pass under the residuary clause.

(b) "Beneficiary" means the beneficiary of a future interest and includes a class member if the future interest is in the form of a class gift.

(c) "Class member" includes an individual who fails to survive the distribution date but who would have taken under a future interest in the form of a class gift had the individual survived the distribution date.

(d) "Descendants", in the phrase "surviving descendants" of a deceased beneficiary or class member in subsections (2)(a) and (2)(b), mean the descendants of a deceased beneficiary or class member who would take under a class gift created in the trust.

~~(d)~~(e) "Distribution date" with respect to a future interest means the time when the future interest is to take effect in possession or enjoyment. The distribution date need not occur at the beginning or end of a calendar day, but may occur at a time during the course of a day.

~~(e)~~(f) "Future interest" includes an alternative future interest and a future interest in the form of a class gift.

~~(f)~~(g) "Future interest under the terms of a trust" means a future interest that was created by a transfer creating a trust or to an existing trust or by an exercise of a power of appointment to an existing trust that directs the continuance of an existing trust, designates a beneficiary of an existing trust, or creates a trust.

~~(g)~~(h) "Surviving beneficiary" or "surviving descendant" means a beneficiary or a descendant "Surviving" in the phrase "surviving beneficiaries" or "surviving descendants" means beneficiaries or descendants who neither predeceased the distribution date nor is considered are deemed to have predeceased the distribution date under 72-2-712.

(2) A future interest under the terms of a trust is contingent on the beneficiary surviving the distribution date. If a beneficiary of a future interest under the terms of a trust fails to survive the distribution date, the following provisions apply:

(a) Except as provided in subsection (2)(d), if the future interest is not in the form of a class gift and the deceased beneficiary leaves surviving descendants, a substitute gift is created in the beneficiary's surviving

descendants. They take by representation the property to which the beneficiary would have been entitled had the beneficiary survived the distribution date.

(b) Except as provided in subsection (2)(d), if the future interest is in the form of a class gift, other than a future interest to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives", or "family" or a class described by language of similar import, a substitute gift is created in the surviving descendants of any deceased beneficiary. The property to which the beneficiaries would have been entitled had all of them survived the distribution date passes to the surviving beneficiaries and the surviving descendants of the deceased beneficiaries. Each surviving beneficiary takes the share to which the surviving beneficiary would have been entitled had the deceased beneficiaries survived the distribution date. Each deceased beneficiary's surviving descendants who are substituted for the deceased beneficiary take by representation the share to which the deceased beneficiary would have been entitled had the deceased beneficiary survived the distribution date. For purposes of this subsection (2), "deceased beneficiary" means a class member who failed to survive the distribution date and left one or more surviving descendants.

(c) For the purposes of 72-2-711, words of survivorship attached to a future interest are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this section. Words of survivorship include words of survivorship that relate to the distribution date or to an earlier or an unspecified time, whether those words of survivorship are expressed in condition-precedent, condition-subsequent, or any other form.

(d) If a governing instrument creates an alternative future interest with respect to a future interest for which a substitute gift is created by subsection (2)(a) or (2)(b), the substitute gift is superseded by the alternative future interest only if an if:

(i) the alternative future interest is in the form of a class gift and one or more members of the class is entitled to take in possession or enjoyment; or

(ii) the alternative future interest is not in the form of a class gift and the expressly designated beneficiary of the alternative future interest is entitled to take in possession or enjoyment.

(3) If, under subsection (2), substitute gifts are created and not superseded with respect to more than one future interest and the future interests are alternative future interests, one to the other, the determination of which of the substitute gifts takes effect is resolved as follows:

(a) Except as provided in subsection (3)(b), the property passes under the primary substitute gift.

(b) If there is a younger-generation future interest, the property passes under the younger-generation substitute gift and not under the primary substitute gift.

(c) As used in this subsection (3), the following definitions apply:

(i) "Primary future interest" means the future interest that would have taken effect had all the deceased beneficiaries of the alternative future interests who left surviving descendants survived the distribution date.

(ii) "Primary substitute gift" means the substitute gift created with respect to the primary future interest.

(iii) "Younger-generation future interest" means a future interest that:

(A) is to a descendant of a beneficiary of the primary future interest;

(B) is an alternative future interest with respect to the primary future interest;

(C) is a future interest for which a substitute gift is created; and

(D) would have taken effect had all the deceased beneficiaries who left surviving descendants survived the distribution date except the deceased beneficiary or beneficiaries of the primary future interest.

(iv) "Younger-generation substitute gift" means the substitute gift created with respect to the younger-generation future interest.

(4) Except as provided in subsection (5), if, after the application of subsections (2) and (3), there is no surviving taker, the property passes in the following order:

(a) if the trust was created in a nonresiduary devise in the transferor's will or in a codicil to the transferor's will, the property passes under the residuary clause in the transferor's will. For purposes of this section, the residuary clause is treated as creating a future interest under the terms of a trust.

(b) if no taker is produced by the application of subsection (4)(a), the property passes to the transferor's heirs under 72-2-721.

(5) If, after the application of subsections (2) and (3), there is no surviving taker and if the future interest was created by the exercise of a power of appointment:

(a) the property passes under the donor's gift-in-default clause, if any, which clause is treated as creating a future interest under the terms of a trust; and

(b) if no taker is produced by the application of subsection (5)(a), the property passes as provided in subsection (4). For purposes of subsection (4), "transferor" means the donor if the power was a nongeneral power and means the donee if the power was a general power."

Section 35. Section 72-2-813, MCA, is amended to read:

"72-2-813. Effect of homicide on intestate succession, wills, trusts, joint assets, life insurance, and beneficiary designations. (1) For purposes of this section, the following definitions apply:

(a) "Disposition or appointment of property" includes a transfer of an item of property or any other benefit to a beneficiary designated in a governing instrument.

(b) "Governing instrument" means a governing instrument executed by the decedent.

(c) "Revocable", with respect to a disposition, appointment, provision, or nomination, means one under which the decedent, at the time of or immediately before death, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of the killer, whether or not the decedent was then empowered to designate the decedent in place of the decedent's killer and whether or not the decedent then had capacity to exercise the power.

(2) An individual who feloniously and intentionally kills the decedent forfeits all benefits under this chapter with respect to the decedent's estate, including an intestate share, an elective share, an omitted spouse's or child's share, a homestead allowance, exempt property, and a family allowance. If the decedent died intestate, the decedent's intestate estate passes as if the killer disclaimed the killer's intestate share.

(3) The felonious and intentional killing of the decedent:

(a) revokes any revocable:

(i) disposition or appointment of property made by the decedent to the killer in a governing instrument;

(ii) provision in a governing instrument conferring a general or nongeneral power of appointment on the killer; and

(iii) nomination of the killer in a governing instrument, nominating or appointing the killer to serve in any fiduciary or representative capacity, including a personal representative, executor, trustee, or agent; and

(b) severs the interests of the decedent and killer in property held by them at the time of the killing as joint tenants with the right of survivorship and transforms the interests of the decedent and killer into tenancies in common.

(4) A severance under subsection (3)(b) does not affect any third-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the killer unless a writing declaring the severance has been noted, registered, filed, or recorded in records appropriate to the kind and location of the property, which records are relied upon, in the ordinary course of transactions involving such property, as

evidence of ownership.

(5) Provisions of a governing instrument are given effect as if the killer disclaimed all provisions revoked by this section or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the killer predeceased the decedent.

(6) A wrongful acquisition of property or interest by a killer not covered by this section must be treated in accordance with the principle that a killer cannot profit from the killer's wrong.

(7) After all right to appeal has been exhausted, a judgment of conviction establishing criminal accountability for the felonious and intentional killing of the decedent conclusively establishes the convicted individual as the decedent's killer for purposes of this section. In the absence of a conviction, the court, upon the petition of an interested person, shall determine whether, under the preponderance of evidence standard, the individual would be found criminally accountable for the felonious and intentional killing of the decedent. If the court determines that under that standard the individual would be found criminally accountable for the felonious and intentional killing of the decedent, the determination conclusively establishes that individual as the decedent's killer for purposes of this section.

(8) (a) A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument affected by an intentional and felonious killing, or for having taken any other action in good faith reliance on the validity of the governing instrument, upon request and satisfactory proof of the decedent's death, before the payor or other third party received written notice of a claimed forfeiture or revocation under this section. A payor or other third party does not have a duty or obligation to make any determination as to whether the decedent was a victim of a homicide or to seek any evidence with respect to a homicide even if the circumstances of the decedent's death are suspicious or questionable as to the beneficiary's participation in a homicide. A payor or other third party is only liable for actions taken 2 or more business days after the actual receipt by the payor or other third party of written notice. The payor or other third party may be liable for actions taken pursuant to the governing instrument only if the form of the service is that described in subsection (8)(b).

(b) The written notice must indicate the name of the decedent, the name of the person asserting an interest, the nature of the payment or item of property or other benefit, and a statement that a claim of forfeiture or revocation is being made under this section. Written notice of a claimed forfeiture or revocation under subsection (8)(a) must be mailed to the payor's or other third party's main office or home by certified mail, return

receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Notice to a sales representative of the payor or other third party does not constitute notice to the payor or other third party. Upon receipt of written notice of a claimed forfeiture or revocation under this section, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. In addition to the actions available under this section, the payor or other third party may take any action authorized by law or the governing instrument. If probate proceedings have not been commenced, the payor or other third party shall file with the court a copy of the written notice received by the payor or other third party, with the payment of funds or transfer or deposit of property. The court may not charge a filing fee to the payor or other third party for the payment to the court of amounts owed or transferred to or deposited with the court or any item of property. The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement in accordance with the determination. A filing fee, if any, may be charged upon disbursement either to the recipient or against the funds or property on deposit with the court, in the discretion of the court. Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

(9) (a) A bona fide purchaser who purchases property or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation is neither obligated under this section to return the payment, item of property, or benefit nor liable under this section for the amount of the payment or the value of the item of property or benefit. However, a person who, not for value, receives a payment, item of property, or other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.

(b) If this section or any part of this section is preempted by federal law, ~~other than the federal Employee Retirement Income Security Act of 1974, as amended,~~ with respect to a payment, an item of property, or any other benefit covered by this section, a person who, not for value, receives the payment, item of property, or other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to

the person who would have been entitled to it were this section or part of this section not preempted.

(10) For the purposes of this section, a felonious and intentional killing includes a deliberate homicide as defined in 45-5-102 and a mitigated deliberate homicide as defined in 45-5-103."

Section 36. Section 72-2-814, MCA, is amended to read:

"72-2-814. Revocation of probate and nonprobate transfers by divorce -- no revocation by other changes of circumstances. (1) As used in this section, the following definitions apply:

(a) "Disposition or appointment of property" includes a transfer of an item of property or any other benefit to a beneficiary designated in a governing instrument.

(b) "Divorce or annulment" means any divorce, annulment, or dissolution or declaration of invalidity of a marriage that would exclude the spouse as a surviving spouse within the meaning of 72-2-812. A decree of separation that does not terminate the status of husband and wife is not a divorce for purposes of this section.

(c) "Divorced individual" includes an individual whose marriage has been annulled.

(d) "Governing instrument" means a governing instrument executed by the divorced individual before the divorce or annulment of the individual's marriage to the individual's former spouse.

(e) "Relative of the divorced individual's former spouse" means an individual who is related to the divorced individual's former spouse by blood, adoption, or affinity and who, after the divorce or annulment, is not related to the divorced individual by blood, adoption, or affinity.

(f) "Revocable", with respect to a disposition, appointment, provision, or nomination, means one under which the divorced individual, at the time of the divorce or annulment, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of the individual's former spouse or former spouse's relative, whether or not the divorced individual was then empowered to designate the divorced individual in place of the individual's former spouse or in place of the former spouse's relative and whether or not the divorced individual then had the capacity to exercise the power.

(2) Except as to a retirement system established in Title 19 or as provided by the express terms of a governing instrument, a court order, or a contract relating to the division of the marital estate made between the divorced individuals before or after the marriage, divorce, or annulment, the divorce or annulment of a marriage:

(a) revokes any revocable:

(i) disposition or appointment of property made by a divorced individual to the individual's former spouse

in a governing instrument and any disposition or appointment created by law or in a governing instrument to a relative of the divorced individual's former spouse;

(ii) provision in a governing instrument conferring a general or nongeneral power of appointment on the divorced individual's former spouse or on a relative of the divorced individual's former spouse; and

(iii) nomination in a governing instrument that nominates a divorced individual's former spouse or a relative of the divorced individual's former spouse to serve in any fiduciary or representative capacity, including a personal representative, executor, trustee, conservator, agent, or guardian; and

(b) severs the interests of the former spouses in property held by them at the time of the divorce or annulment as joint tenants with the right of survivorship and transforms the interests of the former spouses into tenancies in common.

(3) A severance under subsection (2)(b) does not affect any third-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the survivor of the former spouses unless a writing declaring the severance has been noted, registered, filed, or recorded in records appropriate to the kind and location of the property, which records are relied upon, in the ordinary course of transactions involving such property, as evidence of ownership.

(4) Provisions of a governing instrument are given effect as if the former spouse and relatives of the former spouse disclaimed all provisions revoked by this section or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the former spouse and relatives of the former spouse died immediately before the divorce or annulment.

(5) Provisions revoked solely by this section are revived by the divorced individual's remarriage to the former spouse or by a nullification of the divorce or annulment.

(6) No change of circumstances other than as described in this section and in 72-2-813 effects a revocation.

(7) (a) A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument affected by a divorce, annulment, or remarriage, or for having taken any other action in good faith reliance on the validity of the governing instrument, before the payor or other third party received written notice of the divorce, annulment, or remarriage. A payor or other third party does not have a duty or obligation to inquire as to the continued marital relationship between the decedent and a beneficiary or to seek any evidence with respect to a marital

relationship. A payor or other third party is only liable for actions taken 2 or more business days after the actual receipt by the payor or other third party of written notice. The payor or other third party may be liable for actions taken pursuant to the governing instrument only if the form of service is that described in subsection (7)(b).

(b) The written notice must indicate the name of the decedent, the name of the person asserting an interest, the nature of the payment or item of property or other benefit, and a statement that a dissolution, annulment, or remarriage of the decedent and the designated beneficiary occurred. Written notice of the divorce, annulment, or remarriage under subsection (7)(a) must be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of the divorce, annulment, or remarriage, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. In addition to the actions available under this section, the payor or other third party may take any action authorized by law or the governing instrument. If probate proceedings have not been commenced, the payor or other third party shall file with the court a copy of the written notice received by the payor or other third party, with the payment of funds or transfer or deposit of property. The court may not charge a filing fee to the payor or other third party for the payment to the court of amounts owed or transferred to or deposited with the court or any item of property. The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement or transfer in accordance with the determination. A filing fee, if any, may, in the discretion of the court, be charged upon disbursement either to the recipient or against the funds or property on deposit with the court. Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

(8) (a) A bona fide purchaser who purchases property from a former spouse, relative of a former spouse, or any other person or who receives from a former spouse, relative of a former spouse, or any other person for value and without notice a payment or other item of property in partial or full satisfaction of a legally enforceable obligation is neither obligated under this section to return the payment, item of property, or benefit nor liable under this section for the amount of the payment or the value of the item of property or benefit. However, a former spouse, relative of a former spouse, or other person who, not for value, received a payment, item of property, or

other benefit to which that person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.

(b) If this section or any part of this section is preempted by federal law, ~~other than the federal Employee Retirement Income Security Act of 1974, as amended,~~ with respect to a payment, an item of property, or any other benefit covered by this section, a former spouse, relative of the former spouse, or any other person who, not for value, received a payment, item of property, or other benefit to which that person is not entitled under this section is obligated to return that payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.

(9) The provisions of this section apply to testate and intestate estates, and in the event of a conflict between the provisions of this section and those provided in chapters 1 through 5 and chapter 16, part 6, of this title, the provisions of this section control. This subsection does not apply if a divorced individual designates a former spouse as personal representative of the estate subsequent to the divorce."

Section 37. Reformation to correct mistakes. The court may reform the terms of a governing instrument, even if unambiguous, to conform the terms to the transferor's intention if it is proved by clear and convincing evidence what the transferor's intention was and that the terms of the governing instrument were affected by a mistake of fact or law, whether in expression or inducement.

Section 38. Modification to achieve transferor's tax objectives. To achieve the transferor's tax objectives, the court may modify the terms of a governing instrument in a manner that is not contrary to the transferor's probable intention. The court may provide that the modification has retroactive effect.

Section 39. Short title. [Sections 39 through 55] may be cited as the "Uniform Disclaimer of Property Interests Act".

Section 40. Definitions. As used in [sections 39 through 55] the following definitions apply:

(1) "Disclaimant" means the person to whom a disclaimed interest or power would have passed had the

disclaimer not been made.

(2) "Disclaimed interest" means the interest that would have passed to the disclaimant had the disclaimer not been made.

(3) "Disclaimer" means the refusal to accept an interest in or power over property.

(4) "Fiduciary" means a personal representative, trustee, agent acting under a power of attorney, or other person authorized to act as a fiduciary with respect to the property of another person.

(5) "Jointly held property" means property held in the name of two or more persons under an arrangement in which all holders have concurrent interests and under which the last surviving holder is entitled to the whole of the property.

(6) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation, or any other legal or commercial entity.

(7) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band, or Alaskan native village, recognized by federal law or formally acknowledged by a state.

(8) "Trust" means:

(a) an express trust, charitable or noncharitable, with additions thereto, whenever and however created; and

(b) a trust created pursuant to a statute, judgment, or decree which requires the trust to be administered in the manner of an express trust.

Section 41. Scope. [Sections 39 through 55] applies to disclaimers of any interest in or power over property, whenever created.

Section 42. [Sections 39 through 55] supplemented by other law. (1) Unless displaced by a provision of [sections 39 through 55], the principles of law and equity supplement [sections 39 through 55].

(2) [Sections 39 through 55] do not limit any right of a person to waive, release, disclaim, or renounce an interest in or power over property under a law other than [sections 39 through 55].

Section 43. Power to disclaim -- general requirements -- when revocable. (1) A person may disclaim, in whole or part, any interest in or power over property, including a power of appointment. A person may disclaim the interest or power even if its creator imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to disclaim.

(2) Except to the extent a fiduciary's right to disclaim is expressly restricted or limited by another statute of this state or by the instrument creating the fiduciary relationship, a fiduciary may disclaim, in whole or part, any interest in or power over property, including a power of appointment, whether acting in a personal or representative capacity. A fiduciary may disclaim the interest or power even if its creator imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to disclaim or an instrument other than the instrument that created the fiduciary relationship imposed a restriction or limitation on the right to disclaim.

(3) To be effective, a disclaimer must be in a writing or other record, declare the disclaimer, describe the interest or power disclaimed, be signed by the person making the disclaimer, and be delivered or filed in the manner provided in [section 50]. In this subsection:

(a) "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form; and

(b) "signed" means, with present intent to authenticate or adopt a record, to:

(i) execute or adopt a tangible symbol; or

(ii) attach to or logically associate with the record an electronic sound, symbol, or process.

(4) A partial disclaimer may be expressed as a fraction, percentage, monetary amount, term of years, limitation of a power, or any other interest or estate in the property.

(5) A disclaimer becomes irrevocable when it is delivered or filed pursuant to [section 50] or when it becomes effective as provided in [sections 44 through 49], whichever occurs later.

(6) A disclaimer made under [sections 39 through 55] is not a transfer, assignment, or release.

Section 44. Disclaimer of interest in property. (1) In this section:

(a) "Future interest" means an interest that takes effect in possession or enjoyment, if at all, later than the time of its creation.

(b) "Time of distribution" means the time when a disclaimed interest would have taken effect in possession or enjoyment.

(2) Except for a disclaimer governed by [section 45 or 46], the following rules apply to a disclaimer of an interest in property:

(a) The disclaimer takes effect as of the time the instrument creating the interest becomes irrevocable, or, if the interest arose under the law of intestate succession, as of the time of the intestate's death.

(b) The disclaimed interest passes according to any provision in the instrument creating the interest providing for the disposition of the interest, should it be disclaimed, or of disclaimed interests in general.

(c) If the instrument does not contain a provision described in subsection (2)(b), the following rules apply:

(i) If the disclaimant is not an individual, the disclaimed interest passes as if the disclaimant did not exist.

(ii) If the disclaimant is an individual, except as otherwise provided in subsections (2)(c)(iii) and (2)(c)(iv), the disclaimed interest passes as if the disclaimant had died immediately before the time of distribution.

(iii) If by law or under the instrument, the descendants of the disclaimant would share in the disclaimed interest by any method of representation had the disclaimant died before the time of distribution, the disclaimed interest passes only to the descendants of the disclaimant who survive the time of distribution.

(iv) If the disclaimed interest would pass to the disclaimant's estate had the disclaimant died before the time of distribution, the disclaimed interest instead passes by representation to the descendants of the disclaimant who survive the time of distribution. If no descendant of the disclaimant survives the time of distribution, the disclaimed interest passes to those persons, including the state but excluding the disclaimant, and in such shares as would succeed to the transferor's intestate estate under the intestate succession law of the transferor's domicile had the transferor died at the time of distribution. However, if the transferor's surviving spouse is living but is remarried at the time of distribution, the transferor is deemed to have died unmarried at the time of distribution.

(d) Upon the disclaimer of a preceding interest, a future interest held by a person other than the disclaimant takes effect as if the disclaimant had died or ceased to exist immediately before the time of distribution, but a future interest held by the disclaimant is not accelerated in possession or enjoyment.

Section 45. Disclaimer of rights of survivorship in jointly held property. (1) Upon the death of a holder of jointly held property, a surviving holder may disclaim, in whole or part, the greater of:

(a) a fractional share of the property determined by dividing the number one by the number of joint holders alive immediately before the death of the holder to whose death the disclaimer relates; or

(b) all of the property except that part of the value of the entire interest attributable to the contribution furnished by the disclaimant.

(2) A disclaimer under subsection (1) takes effect as of the death of the holder of jointly held property to whose death the disclaimer relates.

(3) An interest in jointly held property disclaimed by a surviving holder of the property passes as if the disclaimant predeceased the holder to whose death the disclaimer relates.

Section 46. Disclaimer of interest by trustee. If a trustee disclaims an interest in property that otherwise would have become trust property, the interest does not become trust property.

Section 47. Disclaimer of power of appointment or other power not held in fiduciary capacity. If a holder disclaims a power of appointment or other power not held in a fiduciary capacity, the following rules apply:

(1) If the holder has not exercised the power, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable.

(2) If the holder has exercised the power and the disclaimer is of a power other than a presently exercisable general power of appointment, the disclaimer takes effect immediately after the last exercise of the power.

(3) The instrument creating the power is construed as if the power expired when the disclaimer became effective.

Section 48. Disclaimer by appointee, object, or taker in default of exercise of power of appointment. (1) A disclaimer of an interest in property by an appointee of a power of appointment takes effect as of the time the instrument by which the holder exercises the power becomes irrevocable.

(2) A disclaimer of an interest in property by an object or taker in default of an exercise of a power of appointment takes effect as of the time the instrument creating the power becomes irrevocable.

Section 49. Disclaimer of power held in fiduciary capacity. (1) If a fiduciary disclaims a power held in a fiduciary capacity which has not been exercised, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable.

(2) If a fiduciary disclaims a power held in a fiduciary capacity which has been exercised, the disclaimer takes effect immediately after the last exercise of the power.

(3) A disclaimer under this section is effective as to another fiduciary if the disclaimer so provides and the fiduciary disclaiming has the authority to bind the estate, trust, or other person for whom the fiduciary is acting.

Section 50. Delivery or filing. (1) In this section, "beneficiary designation" means an instrument, other than an instrument creating a trust, naming the beneficiary of:

- (a) an annuity or insurance policy;
- (b) an account with a designation for payment on death;
- (c) a security registered in beneficiary form;
- (d) a pension, profit-sharing, retirement, or other employment-related benefit plan; or
- (e) any other nonprobate transfer at death.

(2) Subject to subsections (3) through (12), delivery of a disclaimer may be effected by personal delivery, first-class mail, or any other method likely to result in its receipt.

(3) In the case of an interest created under the law of intestate succession or an interest created by will, other than an interest in a testamentary trust:

- (a) a disclaimer must be delivered to the personal representative of the decedent's estate; or
- (b) if no personal representative is then serving, it must be filed with a court having jurisdiction to appoint the personal representative.

(4) In the case of an interest in a testamentary trust:

- (a) a disclaimer must be delivered to the trustee then serving, or if no trustee is then serving, to the personal representative of the decedent's estate; or
- (b) if no personal representative is then serving, it must be filed with a court having jurisdiction to enforce the trust.

(5) In the case of an interest in an inter vivos trust:

- (a) a disclaimer must be delivered to the trustee then serving;

(b) if no trustee is then serving, it must be filed with a court having jurisdiction to enforce the trust; or
 (c) if the disclaimer is made before the time the instrument creating the trust becomes irrevocable, it must be delivered to the settlor of a revocable trust or the transferor of the interest.

(6) In the case of an interest created by a beneficiary designation which is disclaimed before the designation becomes irrevocable, the disclaimer must be delivered to the person making the beneficiary designation.

(7) In the case of an interest created by a beneficiary designation which is disclaimed after the designation becomes irrevocable:

(a) the disclaimer of an interest in personal property must be delivered to the person obligated to distribute the interest; and

(b) the disclaimer of an interest in real property must be recorded in the office of the county recorder of the county where the real property that is the subject of the disclaimer is located.

(8) In the case of a disclaimer by a surviving holder of jointly held property, the disclaimer must be delivered to the person to whom the disclaimed interest passes.

(9) In the case of a disclaimer by an object or taker in default of exercise of a power of appointment at any time after the power was created:

(a) the disclaimer must be delivered to the holder of the power or to the fiduciary acting under the instrument that created the power; or

(b) if no fiduciary is then serving, it must be filed with a court having authority to appoint the fiduciary.

(10) In the case of a disclaimer by an appointee of a nonfiduciary power of appointment:

(a) the disclaimer must be delivered to the holder, the personal representative of the holder's estate or to the fiduciary under the instrument that created the power; or

(b) if no fiduciary is then serving, it must be filed with a court having authority to appoint the fiduciary.

(11) In the case of a disclaimer by a fiduciary of a power over a trust or estate, the disclaimer must be delivered as provided in subsection (3), (4), or (5), as if the power disclaimed were an interest in property.

(12) In the case of a disclaimer of a power by an agent, the disclaimer must be delivered to the principal or the principal's representative.

Section 51. When disclaimer barred or limited. (1) A disclaimer is barred by a written waiver of the

right to disclaim.

(2) A disclaimer of an interest in property is barred if any of the following events occur before the disclaimer becomes effective:

- (a) the disclaimant accepts the interest sought to be disclaimed;
- (b) the disclaimant voluntarily assigns, conveys, encumbers, pledges, or transfers the interest sought to be disclaimed or contracts to do so; or
- (c) a judicial sale of the interest sought to be disclaimed occurs.

(3) A disclaimer, in whole or part, of the future exercise of a power held in a fiduciary capacity is not barred by its previous exercise.

(4) A disclaimer, in whole or part, of the future exercise of a power not held in a fiduciary capacity is not barred by its previous exercise unless the power is exercisable in favor of the disclaimant.

(5) A disclaimer is barred or limited if so provided by law other than [sections 39 through 55].

(6) A disclaimer of a power over property which is barred by this section is ineffective. A disclaimer of an interest in property which is barred by this section takes effect as a transfer of the interest disclaimed to the persons who would have taken the interest under [sections 39 through 55] had the disclaimer not been barred.

Section 52. Tax qualified disclaimer. Notwithstanding any other provision of [sections 39 through 55], if as a result of a disclaimer or transfer the disclaimed or transferred interest is treated pursuant to the provisions of Title 26 of the United States Code, as now or hereafter amended, or any successor statute thereto, and the regulations promulgated thereunder, as never having been transferred to the disclaimant, then the disclaimer or transfer is effective as a disclaimer under [sections 39 through 55].

Section 53. Recording of disclaimer. If an instrument transferring an interest in or power over property subject to a disclaimer is required or permitted by law to be filed, recorded, or registered, the disclaimer may be so filed, recorded, or registered. Except as otherwise provided in [section 50(7)(b)], failure to file, record, or register the disclaimer does not affect its validity as between the disclaimant and persons to whom the property interest or power passes by reason of the disclaimer.

Section 54. Application to existing relationships. Except as otherwise provided in [section 51], an

interest in or power over property existing on [the effective date of this act] as to which the time for delivering or filing a disclaimer under law superseded by [sections 39 through 55] has not expired may be disclaimed after [the effective date of this act].

Section 55. Relation to electronic signatures in global and national commerce act. [Sections 39 through 55] modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001, et seq.) but does not modify, limit, or supersede section 101(c) of that act (15 U.S.C. 7001(c)) or authorize electronic delivery of any of the notices described in section 103(b) of that act (15 U.S.C. 7003(b)).

Section 56. Section 72-3-102, MCA, is amended to read:

"72-3-102. Necessity of order of probate of will. Except as provided in 72-3-1101, to be effective to prove the transfer of any property or to nominate an executor, a will must be declared to be valid by an order of informal probate by the clerk or an adjudication of probate by the court."

Section 57. Section 72-3-112, MCA, is amended to read:

"72-3-112. Venue for estate proceedings. (1) Venue for the first informal or formal testacy or appointment proceedings after a decedent's death is:

- (a) in the county where the decedent had the decedent's domicile at the time of death; or
- (b) if the decedent was not domiciled in this state, in any county where property of the decedent was located at the time of death.

(2) Venue for all subsequent proceedings within the exclusive jurisdiction of the court is in the place where the initial proceeding occurred unless the initial proceeding has been transferred as provided in 72-1-203 or subsection (3) of this section.

(3) If the first proceeding was informal, on application of an interested person and after notice to the proponent in the first proceeding, the court, upon finding that venue is elsewhere, may transfer the proceeding and the file to the other court.

(4) For the purpose of aiding determinations concerning location of assets which may be relevant in cases involving non-domiciliaries, a debt, other than one evidenced by investment or commercial paper or other

instrument in favor of a non-domiciliary is located where the debtor resides or, if the debtor is a person other than an individual, at the place where it has its principal office. Commercial paper, investment paper, and other instruments are located where the instrument is. An interest in property held in trust is located where the trustee may be sued."

Section 58. Section 72-3-122, MCA, is amended to read:

"72-3-122. Time limit on probate, testacy, and appointment proceedings -- exceptions. (1) No informal probate or appointment proceeding or formal testacy or appointment proceeding, other than a proceeding to probate a will previously probated at the testator's domicile and appointment proceedings relating to an estate in which there has been a prior appointment, may be commenced more than 3 years after the decedent's death, except:

(a) if a previous proceeding was dismissed because of doubt about the fact of the decedent's death, appropriate probate, appointment, or testacy proceedings may be maintained at any time thereafter upon a finding that the decedent's death occurred prior to the initiation of the previous proceeding and the applicant or petitioner has not delayed unduly in initiating the subsequent proceeding;

(b) appropriate probate, appointment, or testacy proceedings may be maintained in relation to the estate of an absent, disappeared, or missing person for whose estate a conservator has been appointed at any time within 3 years after the conservator becomes able to establish the death of the protected person;

(c) a proceeding to contest an informally probated will and to secure appointment of the person with legal priority for appointment in the event the contest is successful may be commenced within the later of 12 months from the informal probate or 3 years from the decedent's death;

(d) an informal appointment or a formal testacy or appointment proceeding may be commenced ~~after the time period thereafter~~, if no proceedings concerning the succession or estate administration have occurred within the 3-year period after the decedent's death, but the personal representative has no right to possess estate assets provided in 72-3-606 beyond that necessary to confirm title to the property in the successors to the estate, and claims other than expenses of administration may not be presented against the estate; and

(e) a formal testacy proceeding may be commenced at any time after 3 years from the decedent's death for the purpose of establishing an instrument to direct or control the ownership of property passing or distributable after the decedent's death from one other than the decedent when the property is to be appointed by the terms

of the decedent's will or is to pass or be distributed as a part of the decedent's estate or its transfer is otherwise to be controlled by the terms of the decedent's will.

(2) These limitations do not apply to proceedings to construe probated wills or determine heirs of an intestate.

(3) In cases under subsection (1)(a) or (1)(b), the date on which a testacy or appointment proceeding is properly commenced shall be deemed to be the date of the decedent's death for purposes of other limitations provisions of this code which relate to the date of death."

Section 59. Section 72-3-131, MCA, is amended to read:

"72-3-131. ~~Compromise of controversies~~ Effect of approval of agreements involving trusts, inalienable interests, or interests of third persons. (1) A compromise of any controversy as to admission to probate of any instrument offered for formal probate as the will of a decedent, the construction, validity, or effect of any governing instrument, the rights or interests in the estate of the decedent, of any successor, or the administration of the estate, if approved in a formal proceeding in the court for that purpose, is binding on all the parties to the proceeding, including those unborn, unascertained, or who could not be located.

(2) An approved compromise is binding even though it may affect a trust or an inalienable interest. A compromise does not impair the rights of creditors or of taxing authorities who are not parties to it."

Section 60. Section 72-3-201, MCA, is amended to read:

"72-3-201. Applications to be verified. Applications for informal probate or informal appointment must be directed to the clerk and verified by the applicant to be accurate and complete to the best of the applicant's knowledge and belief as to the information required by 72-3-202 through 72-3-205. By verifying an application for informal probate or informal appointment, the applicant submits personally to the jurisdiction of the court in any proceeding for relief from fraud relating to the application, or for perjury, that may be instituted against the applicant."

Section 61. Section 72-3-202, MCA, is amended to read:

"72-3-202. Required contents of application. Every application for informal probate of a will or for informal appointment of a personal representative, other than a special, ancillary, or successor representative,

must contain the following:

- (1) a statement of the interest of the applicant;
- (2) the name and date of death of the decedent, the decedent's age, and the county and state of the decedent's domicile at the time of death and the names and addresses of the spouse, children, heirs, and devisees and the ages of any who are minors so far as known or ascertainable with reasonable diligence by the applicant;
- (3) if the decedent was not domiciled in the state at the time of death, a statement showing venue;
- (4) a statement identifying and indicating the address of any personal representative of the decedent appointed in this state or elsewhere whose appointment has not been terminated;
- (5) a statement indicating whether the applicant has received a demand for notice or is aware of any demand for notice of any probate or appointment proceeding concerning the decedent that may have been filed in this state or elsewhere; and
- (6) that the time limit for informal probate or appointment as provided in this chapter has not expired either because 3 years or less have passed since the decedent's death, or, if more than 3 years from death have passed, circumstances as described by 72-3-122 have occurred authorizing tardy probate or appointment."

Section 62. Section 72-3-203, MCA, is amended to read:

"72-3-203. Probate and appointment under will -- additional information required. (1) An application for informal probate of a will must state the following in addition to the statements required by 72-3-202:

(a) that the original of the decedent's last will is in the possession of the court or accompanies the application, that an authenticated copy of a will probated in another jurisdiction accompanies the application, or that an authenticated copy of a will filed without probate in another jurisdiction and proved, as provided in 72-3-220, accompanies the application;

(b) that the applicant to the best of the applicant's knowledge believes the will to have been validly executed;

(c) that after the exercise of reasonable diligence, the applicant is unaware of any instrument revoking the will and that the applicant believes that the instrument that is the subject of the application is the decedent's last will;

~~_____ (d) that the time limit for informal probate, as provided in this chapter, has not expired either because~~

~~3 years or less have passed since the decedent's death or, if more than 3 years from death have passed, that circumstances as described by 72-3-122 authorizing tardy probate have occurred.~~

(2) An application for informal appointment of a personal representative to administer an estate under a will must describe the will by date of execution and state the time and place of probate or the pending application or petition for probate. The application for appointment must adopt the statements in the application or petition for probate and state the name, address, and priority for appointment of the person whose appointment is sought."

Section 63. Formal testacy proceedings -- contested cases. In a contested case in which the proper execution of a will is at issue, the following rules apply:

(1) If the will is self-proved pursuant to 72-2-524, the will satisfies the requirements for execution without the testimony of any attesting witness, upon filing the will and the acknowledgment and affidavits annexed or attached to it, unless there is evidence of fraud or forgery affecting the acknowledgment or affidavit.

(2) If the will is witnessed pursuant to 72-2-522(1), but not self-proved, the testimony of at least one of the attesting witnesses is required to establish proper execution if the witness is within this state, competent, and able to testify. Proper execution may be established by other evidence, including an affidavit of an attesting witness. An attestation clause that is signed by the attesting witnesses raises a rebuttable presumption that the events recited in the clause occurred.

Section 64. Section 72-3-401, MCA, is amended to read:

"72-3-401. Supervised administration -- nature and purpose -- presumptive entitlement. (1) Supervised administration is a single in rem proceeding to secure complete administration and settlement of a decedent's estate under the continuing authority of the court, which extends until entry of an order approving distribution of the estate and discharging the personal representative ~~or other order terminating the proceeding.~~ or other order terminating the proceeding. A supervised personal representative is responsible to the court, as well as to the interested parties, and is subject to directions concerning the estate made by the court on its own motion or on the motion of any interested party. Except as otherwise provided in this part, or as otherwise ordered by the court, a supervised personal representative has the same duties and powers as a personal representative who is not supervised.

~~(2) If a probate estate has not been closed within 3 years after the first appointment of a personal representative or administrator, any devisee under a will, beneficiary of a trust, or intestate heir of the decedent is entitled to petition for supervised administration under this section and is presumptively entitled to receive an order for supervised administration. The burden of proof to show cause why supervised administration should not be granted is on the personal representative or administrator."~~

Section 65. Section 72-3-404, MCA, is amended to read:

"72-3-404. Powers and duties of personal representative in supervised administration. ~~(1) A supervised personal representative is responsible to the court, as well as to the interested parties, and is subject to directions concerning the estate made by the court on its own motion or on the motion of any interested party.~~

~~———(2) Except as otherwise provided in this part or as otherwise ordered by the court, a supervised personal representative has the same duties and powers as a personal representative who is not supervised.~~

~~———(3) Unless restricted by the court, a supervised personal representative has, without interim orders approving exercise of a power, all powers of personal representatives under this code, but the personal representative may not exercise the power to make any distribution of the estate without prior order of the court. Any other restriction on the power of a personal representative that may be ordered by the court must be endorsed on the personal representative's letters of appointment and unless so endorsed is ineffective as to persons dealing in good faith with the personal representative."~~

Section 66. Section 72-3-502, MCA, is amended to read:

"72-3-502. Priorities for appointment. Whether the proceedings are formal or informal, persons who are not disqualified have priority for appointment in the following order:

(1) the person with priority as determined by a probated will, including a person nominated by a power conferred in a will;

(2) the surviving spouse of the decedent who is a devisee of the decedent;

(3) the custodial parent of a minor decedent;

(4) other devisees of the decedent;

(5) the surviving spouse of the decedent;

(6) the parent of an adult decedent who was survived by issue, none of whom is an adult;

- ~~(6)~~(7) other heirs of the decedent;
- ~~(7)~~(8) public administrator;
- ~~(8)~~(9) 45 days after the death of the decedent, any creditor."

Section 67. Section 72-3-504, MCA, is amended to read:

"72-3-504. Renunciation -- nomination of other -- two or more persons sharing priority. (1) A person entitled to letters under 72-3-502(2) through ~~(6)~~ (7) may nominate a qualified person to act as personal representative.

(2) Any person entitled to letters may renounce the person's right to nominate or to an appointment by appropriate writing filed with the court.

(3) When two or more persons share a priority, those of them who do not renounce shall concur in nominating another to act for them or in applying for appointment. If they are unable to concur in nominating another to act for them or in applying for appointment, the court may appoint any qualified person."

Section 68. Section 72-3-514, MCA, is amended to read:

"72-3-514. Demand for bond by interested person. (1) Any person apparently having an interest in the estate worth in excess of ~~\$1,000~~ \$5,000 or any creditor having a claim in excess of ~~\$1,000~~ \$5,000 may make a written demand that a personal representative give bond. The demand must be filed with the clerk and a copy mailed to the personal representative, if appointment and qualification have occurred. Upon filing of the demand, bond is required, but the requirement ceases if the person demanding bond ceases to be interested in the estate or if bond is excused as provided in 72-3-513 or 72-3-515.

(2) After the personal representative has received notice and until the filing of the bond or cessation of the requirement of bond, the personal representative shall refrain from exercising any powers of the personal representative's office except as necessary to preserve the estate.

(3) Failure of the personal representative to meet a requirement of bond by giving suitable bond within 30 days after receipt of notice is cause for removal and appointment of a successor personal representative."

Section 69. Section 72-3-607, MCA, is amended to read:

"72-3-607. Inventory -- appraisal. (1) Within 9 months after appointment, a personal representative who

is not a special administrator or a successor to another representative who has previously discharged this duty shall prepare an inventory of property owned by the decedent at the time of the decedent's death, listing the inventory of property with reasonable detail and indicating for each listed item its fair market value as of the date of the decedent's death and the type and amount of any encumbrance that may exist with reference to the item.

(2) The inventory must include a statement of the ~~full and true~~ fair market value of the decedent's interest in every item listed in the inventory. The personal representative may ~~appoint one or more~~ employ a qualified and disinterested ~~persons~~ appraiser to assist ~~the personal representative~~ in ascertaining the fair market value as of the date of the decedent's death of ~~all assets included in the estate~~ any asset the value of which may be subject to reasonable doubt. Different persons may be employed to appraise different kinds of assets included in the estate. The names and addresses of any ~~appraisers~~ appraiser must be indicated on the inventory with the item or items appraised.

(3) The personal representative shall:

(a) send a copy of the inventory to ~~interested persons~~ the following who request it: heirs, devisees, and creditors with allowed claims that have not been satisfied; or

(b) file the original of the inventory with the court and send a copy of the inventory to interested persons who request it."

Section 70. Section 72-3-611, MCA, is amended to read:

"72-3-611. No surcharge for authorized acts generally -- limitation. (1) A personal representative may not be surcharged for acts of administration or distribution if the conduct in question was authorized at the time. Subject to other obligations of administration and of this code, an informally probated will is authority to administer and distribute the estate according to its terms. Subject to the provisions of this code, an order of appointment of a personal representative, whether issued in informal or formal proceedings, is authority to distribute apparently intestate assets to the heirs of the decedent if, at the time of distribution, the personal representative is not aware of a pending testacy proceeding, a proceeding to vacate an order entered in an earlier testacy proceeding, a formal proceeding questioning the personal representative's appointment or fitness to continue, or a supervised administration proceeding.

(2) This section does not affect the duty of the personal representative to administer and distribute the estate in accordance with the rights of claimants whose claims have been allowed, the surviving spouse, any

minor and dependent children, and any pretermitted child of the decedent as described elsewhere in this code."

Section 71. Section 72-3-613, MCA, is amended to read:

"72-3-613. Transactions authorized for personal representative. Except as restricted by this code or otherwise provided by the will or by an order in a formal proceeding and subject to the priorities stated in 72-3-901, a personal representative, acting reasonably for the benefit of the interested persons, may properly:

(1) retain assets owned by the decedent pending distribution or liquidation, including those in which the representative is personally interested or which are otherwise improper for trust investment;

(2) receive assets from fiduciaries or other sources;

(3) perform, compromise, or refuse performance of the decedent's contracts that continue as obligations of the estate, as the personal representative may determine under the circumstances. In performing enforceable contracts by the decedent to convey or lease land, the personal representative, among other possible courses of action, may:

(a) execute and deliver a deed of conveyance for cash payment of all sums remaining due or the purchaser's note for the sum remaining due secured by a mortgage or deed of trust on the land; or

(b) deliver a deed in escrow with directions that the proceeds, when paid in accordance with the escrow agreement, be paid to the successors of the decedent, as designated in the escrow agreement;

(4) satisfy written charitable pledges of the decedent irrespective of whether the pledges constituted binding obligations of the decedent or were properly presented as claims, if in the judgment of the personal representative the decedent would have wanted the pledges completed under the circumstances;

(5) if funds are not needed to meet debts and expenses currently payable and are not immediately distributable, deposit or invest liquid assets of the estate, including money received from the sale of other assets, in federally insured interest-bearing accounts, readily marketable secured loan arrangements, or other prudent investments that would be reasonable for use by trustees generally. If the personal representative is authorized to invest funds in United States obligations, the personal representative may invest in these obligations either directly or in the form of securities of or other interests in an open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 through 80a-64), as amended, if:

(a) the portfolio of the investment company or investment trust is limited to United States government

obligations and repurchase agreements fully collateralized by United States government obligations; and

(b) the investment company or investment trust takes delivery of the collateral for any repurchase agreement, either directly or through an authorized custodian.

(6) acquire or dispose of an asset, including land in this or another state, for cash or on credit, at public or private sale and manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;

(7) make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, raze existing or erect new party walls or buildings;

(8) subdivide, develop, or dedicate land to public use; make or obtain the vacation of plats and adjust boundaries; adjust differences in valuation on exchange or partition by giving or receiving considerations; or dedicate easements to public use without consideration;

(9) enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, for a term within or extending beyond the period of administration;

(10) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(11) ~~with the consent of the heirs or devisees or the court,~~ abandon property when in the opinion of the personal representative it is valueless or is so encumbered or is in condition that it is of no benefit to the estate;

(12) vote stocks or other securities in person or by general or limited proxy;

(13) pay calls, assessments, and other sums chargeable or accruing against or on account of securities, unless barred by the provisions relating to claims;

(14) hold a security in the name of a nominee or in other form without disclosure of the interest of the estate, but the personal representative is liable for any act of the nominee in connection with the security so held;

(15) insure the assets of the estate against damage, loss, and liability and the personal representative against liability as to third persons;

(16) borrow money with or without security to be repaid from the estate assets or otherwise and advance money for the protection of the estate;

(17) ~~with the consent of the heirs or devisees or the court,~~ effect a fair and reasonable compromise with any debtor or obligor or extend, renew, or in any manner modify the terms of any obligation owing to the estate. If the personal representative holds a mortgage, pledge, or other lien upon property of another person, the

personal representative may, in lieu of foreclosure, accept a conveyance or transfer of encumbered assets from the owner thereof in satisfaction of the indebtedness secured by lien.

(18) pay taxes, assessments, compensation of the personal representative, and other expenses incident to the administration of the estate;

(19) sell or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

(20) allocate items of income or expense to either estate income or principal, as permitted or provided by law;

(21) employ persons, including attorneys, auditors, investment advisors, or agents, even if they are associated with the personal representative, to advise or assist the personal representative in the performance of the personal representative's administrative duties; act without independent investigation upon their recommendations; and, instead of acting personally, employ one or more agents to perform any act of administration, whether or not discretionary;

(22) prosecute or defend claims or proceedings in any jurisdiction for the protection of the estate and of the personal representative in the performance of the personal representative's duties;

(23) sell, mortgage, or lease any real or personal property of the estate or any interest therein for cash, credit, or for part cash and part credit and with or without security for unpaid balances; ~~provided, however, a personal representative may not, without prior court approval in a supervised proceeding, either directly or indirectly purchase any property of the estate that the personal representative represents, nor be interested in the sale. All sales must be fairly conducted and made for the best price obtainable.~~

(24) continue any unincorporated business or venture in which the decedent was engaged at the time of death in the same business form, including a sole proprietorship, partnership, or limited liability company, unless otherwise ordered by the court in a formal proceeding initiated by an interested person on the basis that continuation of the business is not in the best interests of the estate or its beneficiaries;

(25) incorporate any business or venture in which the decedent was engaged at the time of death;

(26) satisfy and settle claims and distribute the estate as provided in this code."

Section 72. Powers of personal representatives in general. (1) Until termination of his appointment

a personal representative has the same power over the title to property of the estate that an absolute owner would have, in trust however, for the benefit of the creditors and others interested in the estate. This power may be exercised without notice, hearing, or order of court.

(2) A personal representative has access to and authority over a digital asset of the decedent to the extent provided by the Revised Uniform Fiduciary Access to Digital Assets Act or by order of court.

Section 73. Section 72-3-618, MCA, is amended to read:

"72-3-618. Persons dealing with personal representative -- protection. (1) A person who in good faith and without notice either assists a personal representative or deals with a personal representative for value is protected as if the personal representative properly exercised the personal representative's power. The fact that a person knowingly deals with a personal representative does not alone require the person to inquire into the existence of a power or the propriety of its exercise. Except for restrictions on powers of supervised personal representatives that are endorsed on letters as provided in ~~72-3-404(3)~~ 72-3-404, a provision in any will or order of court purporting to limit the power of a personal representative is not effective except as to persons with actual knowledge of the provision.

(2) A person is not bound to see to the proper application of estate assets paid or delivered to a personal representative.

(3) The protection expressed in this section extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters, including a case in which the alleged decedent is found to be alive. The protection expressed in this section is not a substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries."

Section 74. Section 72-3-631, MCA, is amended to read:

"72-3-631. Compensation of personal representative. (1) A personal representative is entitled to reasonable compensation for services. ~~The compensation may not exceed 3% of the first \$40,000 of the value of the estate as reported for federal estate tax purposes and 2% of the value of the estate in excess of \$40,000 as reported for federal estate tax purposes. However, a personal representative is entitled to a minimum compensation of the lesser of \$100 or the value of the gross estate.~~

~~———— (2) In proceedings conducted for the termination of joint tenancies, the compensation of the personal representative may not exceed 2% of the interest passing.~~

~~———— (3) In proceedings conducted for the termination of a life estate, the compensation allowed the personal representative may not exceed 2% of the value of the life estate if it is terminated in connection with a probate or joint tenancy termination. If a life estate is terminated separately, the personal representative's compensation may not exceed 2% of the value of the estate, except that it may not be less than \$100.~~

~~———— (4) If there is more than one personal representative, only one compensation is allowed.~~

~~———— (5) The court may allow additional compensation for extraordinary services. The additional compensation may not be greater than the amount that is allowed for the original compensation.~~

~~(6)~~(2) If the will provides for the compensation of the personal representative and there is no contract with the decedent regarding compensation, the personal representative may renounce the provision before qualifying and be entitled to compensation under the terms of this section. A personal representative also may renounce the right to all or any part of the compensation. A written renunciation of fee may be filed with the court."

Section 75. Section 72-3-803, MCA, is amended to read:

"72-3-803. Nonclaim -- limitations on presentation of claims -- exceptions. (1) All claims against a decedent's estate that arose before the death of the decedent, including claims of the state and any subdivision of the state, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by other statute of limitations, are barred against the estate, the personal representative, and the heirs and devisees and nonprobate transferees of the decedent unless presented within the earlier of the following time limitations:

(a) within 1 year after the decedent's death; or

(b) within the time provided by 72-3-801(2) for creditors who are given actual notice and within the time provided in 72-3-801(1) for all creditors barred by publication.

~~(2) However, claims~~ A claim described in subsection (1) which is barred by the nonclaim statute at the decedent's domicile before the giving of notice to creditors in this state ~~are also~~ is barred in this state.

~~(2)~~(3) All claims against a decedent's estate that arise at or after the death of the decedent, including claims of the state and any subdivision of the state, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, are barred against the estate, the

personal representative, and the heirs and devisees of the decedent unless presented as follows:

(a) a claim based on a contract with the personal representative, within 4 months after performance by the personal representative is due;

(b) any other claim, within the later of 4 months after it arises or the time specified in subsection (1)(a).

~~(3)~~(4) This section does not affect or prevent:

(a) any proceeding to enforce any mortgage, pledge, or other lien upon property of the estate;

(b) to the limits of the insurance protection only, any proceeding to establish liability of the decedent or the personal representative for which the decedent or the personal representative is protected by liability insurance; or

(c) collection of compensation for services rendered and reimbursement for expenses advanced by the personal representative or by the attorney or accountant for the personal representative of the estate."

Section 76. Section 72-3-815, MCA, is amended to read:

"72-3-815. Compromise of claims. When a claim against the estate has been presented in any manner, the personal representative ~~with the consent of the heirs or devisees or the court~~ may, if it appears for the best interest of the estate, compromise the claim, whether due or not due, absolute or contingent, liquidated or unliquidated."

Section 77. Section 72-3-917, MCA, is amended to read:

"72-3-917. Distribution to person under disability. (1) A personal representative may discharge the personal representative's obligation to distribute to any person under legal disability by distributing in a manner expressly provided in the will.

(2) Unless contrary to an express provision in the will, the personal representative may discharge the personal representative's obligation to distribute to a minor or person under other disability as authorized by 72-5-104 or any other statute. If the personal representative knows that a conservator has been appointed or that a proceeding for appointment of a conservator is pending, the personal representative is authorized to distribute only to the conservator.

(3) (a) If the heir or devisee is under disability other than minority, the personal representative is authorized to distribute to:

(i) an attorney-in-fact who has authority under a power of attorney to receive property for that person;
or

(ii) the spouse, parent, or other close relative with whom the person under disability resides if the distribution is of amounts not exceeding \$10,000 a year or property not exceeding ~~\$10,000~~ \$50,000 in value, unless the court authorizes a larger amount or greater value.

(b) Any person receiving money or property for the disabled person is obligated to apply the money or property to the support of the disabled person, but the receiving person may not accept any pay except by way of reimbursement for out-of-pocket expenses for goods and services necessary for the support of the disabled person. Excess sums must be preserved for future support of the disabled person. The personal representative is not responsible for the proper application of money or property distributed pursuant to this subsection (3)."

Section 78. Section 72-3-1012, MCA, is amended to read:

"72-3-1012. Liability of distributees to claimants. (1) After assets of an estate have been distributed and subject to 72-3-1013, an undischarged claim that is not barred may be prosecuted in a proceeding against one or more distributees. ~~A distributee is not liable to claimants~~ No distributee shall be liable to claimants for amounts received as exempt property, homestead or family allowances, or for amounts in excess of the value of the distributee's distribution as of the time of distribution or for amounts in excess of the value of the distributee's distribution as of the time of distribution.

(2) As between distributees, each shall bear the cost of satisfaction of unbarred claims as if the claim had been satisfied in the course of administration. Any distributee who fails to notify other distributees of the demand made upon the distributee by the claimant in sufficient time to permit them to join in any proceeding in which the claim was asserted against the distributee loses the right of contribution against other distributees."

Section 79. Section 72-3-1013, MCA, is amended to read:

"72-3-1013. Limitation on actions against distributees. (1) Unless previously adjudicated in a formal testacy proceeding or in a proceeding settling the accounts of a personal representative or otherwise barred, the claim of any claimant to recover from a distributee who is liable to pay the claim and the right of any heir or devisee or of a successor personal representative acting in their behalf to recover property improperly distributed or the value thereof from any distributee is forever barred at the later of 3 years after the decedent's death or 1

year after the time of distribution ~~thereof~~, but all claims of creditors of the decedent are barred 1 year after the decedent's death.

(2) This section does not bar an action to recover property or value received as the result of fraud."

Section 80. Section 72-4-203, MCA, is amended to read:

"72-4-203. Service on foreign personal representative. (1) Service of process may be made upon the foreign personal representative by registered or certified mail addressed to the foreign personal representative's last reasonably ascertainable address requesting a return receipt signed by addressee only. Notice by ordinary first-class mail is sufficient if registered or certified mail service to the addressee is unavailable. Service may be made upon a foreign personal representative in the manner in which service could have been made under other laws of this state on either the foreign personal representative or the foreign personal representative's decedent immediately prior to death.

(2) If service is made upon a foreign personal representative as provided in subsection (1), the foreign personal representative must be allowed at least 30 days within which to appear or respond."

Section 81. Section 72-6-111, MCA, is amended to read:

"72-6-111. Nonprobate transfers on death. (1) A provision for a nonprobate transfer on death in an insurance policy, contract of employment, bond, mortgage, promissory note, certificated or uncertificated security, account agreement, custodial agreement, deposit agreement, compensation plan, pension plan, individual retirement plan, employee benefit plan, trust, conveyance, deed of gift, ~~beneficiary~~ transfer on death deed, as defined in ~~72-6-124~~ [section 84], marital property agreement, or other written instrument of a similar nature is nontestamentary. This subsection includes a written provision that:

(a) money or other benefits due to, controlled by, or owned by a decedent before death must be paid after the decedent's death to a person whom the decedent designates either in the instrument or in a separate writing, including a will, executed either before or at the same time as the instrument or later;

(b) money due or to become due under the instrument ceases to be payable in the event of death of the promisee or the promisor before payment or demand; or

(c) any property controlled by or owned by the decedent before death that is the subject of the instrument passes to a person the decedent designates either in the instrument or in a separate writing, including a will,

executed either before or at the same time as the instrument or later.

(2) This section does not limit rights of creditors under other laws of this state."

Section 82. Liability of nonprobate transferees for creditor claims and statutory allowances. (1)

In this section, "nonprobate transfer" means a valid transfer effective at death, other than a transfer of a survivorship interest in a joint tenancy of real estate, by a transferor whose last domicile was in this state to the extent that the transferor immediately before death had power, acting alone, to prevent the transfer by revocation or withdrawal and instead to use the property for the benefit of the transferor or apply it to discharge claims against the transferor's probate estate.

(2) Except as otherwise provided by statute, a transferee of a nonprobate transfer is subject to liability to any probate estate of the decedent for allowed claims against decedent's probate estate and statutory allowances to the decedent's spouse and children to the extent the estate is insufficient to satisfy those claims and allowances. The liability of a nonprobate transferee may not exceed the value of nonprobate transfers received or controlled by that transferee.

(3) Nonprobate transferees are liable for the insufficiency described in subsection (2) in the following order of priority:

(a) a transferee designated in the decedent's will or any other governing instrument, as provided in the instrument;

(b) the trustee of a trust serving as the principal nonprobate instrument in the decedent's estate plan as shown by its designation as devisee of the decedent's residuary estate or by other facts or circumstances, to the extent of the value of the nonprobate transfer received or controlled;

(c) other nonprobate transferees, in proportion to the values received.

(4) Unless otherwise provided by the trust instrument, interests of beneficiaries in all trusts incurring liabilities under this section abate as necessary to satisfy the liability, as if all of the trust instruments were a single will and the interests were devised under it.

(5) A provision made in one instrument may direct the apportionment of the liability among the nonprobate transferees taking under that or any other governing instrument. If a provision in one instrument conflicts with a provision in another, the later one prevails.

(6) Upon due notice to a nonprobate transferee, the liability imposed by this section is enforceable in

proceedings in this state, whether or not the transferee is located in this state.

(7) A proceeding under this section may not be commenced unless the personal representative of the decedent's estate has received a written demand for the proceeding from the surviving spouse or a child, to the extent that statutory allowances are affected, or a creditor. If the personal representative declines or fails to commence a proceeding after demand, a person making demand may commence the proceeding in the name of the decedent's estate, at the expense of the person making the demand and not of the estate. A personal representative who declines in good faith to commence a requested proceeding incurs no personal liability for declining.

(8) A proceeding under this section must be commenced within 1 year after the decedent's death, but a proceeding on behalf of a creditor whose claim was allowed after proceedings challenging disallowance of the claim may be commenced within 60 days after final allowance of the claim.

(9) Unless a written notice asserting that a decedent's probate estate is nonexistent or insufficient to pay allowed claims and statutory allowances has been received from the decedent's personal representative, the following rules apply:

(a) Payment or delivery of assets by a financial institution, registrar, or other obligor, to a nonprobate transferee in accordance with the terms of the governing instrument controlling the transfer releases the obligor from all claims for amounts paid or assets delivered.

(b) A trustee receiving or controlling a nonprobate transfer is released from liability under this section with respect to any assets distributed to the trust's beneficiaries. Each beneficiary to the extent of the distribution received becomes liable for the amount of the trustee's liability attributable to assets received by the beneficiary.

Section 83. Short title. [Sections 83 through 100] may be cited as the "Uniform Real Property Transfer on Death Act".

Section 84. Definitions. As used in [sections 83 through 100], the following definitions apply:

- (1) "Beneficiary" means a person that receives property under a transfer on death deed.
- (2) "Designated beneficiary" means a person designated to receive property in a transfer on death deed.
- (3) "Joint owner" means an individual who owns property concurrently with one or more other individuals with a right of survivorship. The term includes a joint tenant. The term does not include a tenant in common.

(4) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(5) "Property" means an interest in real property located in this state which is transferable on the death of the owner.

(6) "Transfer on death deed" means a deed authorized under this part.

(7) "Transferor" means an individual who makes a transfer on death deed.

Section 85. Applicability. [Sections 83 through 100] applies to a transfer on death deed made before, on, or after [the effective date of this act] by a transferor dying on or after [the effective date of this act].

Section 86. Nonexclusivity. [Section 83 through 100] does not affect any method of transferring property otherwise permitted under the law of this state.

Section 87. Transfer on death deed authorized. An individual may transfer property to one or more beneficiaries effective at the transferor's death by a transfer on death deed.

Section 88. Transfer on death deed revocable. A transfer on death deed is revocable even if the deed or another instrument contains a contrary provision.

Section 89. Transfer on death deed nontestamentary. A transfer on death deed is nontestamentary.

Section 90. Capacity of transferor. The capacity required to make or revoke a transfer on death deed is the same as the capacity required to make a will.

Section 91. Requirements. A transfer on death deed:

(1) except as otherwise provided in subsection (2), must contain the essential elements and formalities of a properly recordable inter vivos deed;

(2) must state that the transfer to the designated beneficiary is to occur at the transferor's death; and

(3) must be recorded before the transferor's death in the public records in the office of the county clerk and recorder of the county where the property is located.

Section 92. Notice, delivery, acceptance, consideration not required. A transfer on death deed is effective without:

- (1) notice or delivery to or acceptance by the designated beneficiary during the transferor's life; or
- (2) consideration.

Section 93. Revocation by instrument authorized -- revocation by act not permitted. (1) Subject to subsection (2), an instrument is effective to revoke a recorded transfer on death deed, or any part of it, only if the instrument:

(a) is one of the following:

- (i) a transfer on death deed that revokes the deed or part of the deed expressly or by inconsistency;
- (ii) an instrument of revocation that expressly revokes the deed or part of the deed;
- (iii) an inter vivos deed that expressly revokes the transfer on death deed or part of the deed; and
- (b) is acknowledged by the transferor after the acknowledgment of the deed being revoked and recorded

before the transferor's death in the public records in the office of the county clerk and recorder of the county where the deed is recorded.

(2) If a transfer on death deed is made by more than one transferor:

- (a) revocation by a transferor does not affect the deed as to the interest of another transferor; and
- (b) a deed of joint owners is revoked only if it is revoked by all of the living joint owners.

(3) After a transfer on death deed is recorded, it may not be revoked by a revocatory act on the deed.

(4) This section does not limit the effect of an inter vivos transfer of the property, which revokes any prior transfer on death deed to the property.

Section 94. Effect of transfer on death deed during transferor's life. During a transferor's life, a transfer on death deed does not:

(1) affect an interest or right of the transferor or any other owner, including the right to transfer or encumber the property;

- (2) affect an interest or right of a transferee, even if the transferee has actual or constructive notice of the deed;
- (3) affect an interest or right of a secured or unsecured creditor or future creditor of the transferor, even if the creditor has actual or constructive notice of the deed;
- (4) affect the transferor's or designated beneficiary's eligibility for any form of public assistance;
- (5) create a legal or equitable interest in favor of the designated beneficiary; or
- (6) subject the property to claims or process of a creditor of the designated beneficiary.

Section 95. Effect of transfer on death deed at transferor's death. (1) Except as otherwise provided in the transfer on death deed, in [section 82], or in this section, and subject to chapter 2, part 2, of this title, on the death of the transferor, the following rules apply to property that is the subject of a transfer on death deed and owned by the transferor at death:

(a) Subject to subsection (1)(b), the interest in the property is transferred to the designated beneficiary in accordance with the deed.

(b) The interest of a designated beneficiary is contingent on the designated beneficiary surviving the transferor. The interest of a designated beneficiary that fails to survive the transferor lapses.

(c) Subject to subsection (1)(d), concurrent interests are transferred to the beneficiaries in equal and undivided shares with no right of survivorship.

(d) If the transferor has identified two or more designated beneficiaries to receive concurrent interests in the property, the share of one which lapses or fails for any reason is transferred to the other, or to the others in proportion to the interest of each in the remaining part of the property held concurrently.

(2) Subject to Title 70, chapter 21, a beneficiary takes the property subject to all conveyances, encumbrances, assignments, contracts, mortgages, liens, and other interests to which the property is subject at the transferor's death. For purposes of this subsection and Title 70, chapter 21, the recording of the transfer on death deed is deemed to have occurred at the transferor's death.

(3) If a transferor is a joint owner and is:

(a) survived by one or more other joint owners, the property that is the subject of a transfer on death deed belongs to the surviving joint owner or owners with right of survivorship; or

(b) the last surviving joint owner, the transfer on death deed is effective.

(4) A transfer on death deed transfers property without covenant or warranty of title even if the deed contains a contrary provision.

Section 96. Disclaimer. A beneficiary may disclaim all or part of the beneficiary's interest as provided by [sections 39 through 55], the Uniform Disclaimer of Property Interests Act.

Section 97. Liability for creditor claims and statutory allowances. A beneficiary of a transfer on death deed is liable for an allowed claim against the transferor's probate estate and statutory allowances to a surviving spouse and children to the extent provided in [section 82].

Section 98. Optional form of transfer on death deed. The following form may be used to create a transfer on death deed. The other sections of [sections 83 through 100] govern the effect of this or any other instrument used to create a transfer on death deed:

(front of form)

REVOCABLE TRANSFER ON DEATH DEED

NOTICE TO OWNER

You should carefully read all information on the other side of this form. You May Want to Consult a Lawyer Before Using This Form.

This form must be recorded before your death, or it will not be effective.

IDENTIFYING INFORMATION

Owner or Owners Making This Deed:

Printed name

Mailing address

Printed name

Mailing address

Legal description of the property:

PRIMARY BENEFICIARY

I designate the following beneficiary if the beneficiary survives me.

Printed name

Mailing address, if available

ALTERNATE BENEFICIARY - Optional

If my primary beneficiary does not survive me, I designate the following alternate beneficiary if that beneficiary survives me.

Printed name

Mailing address, if available

TRANSFER ON DEATH

At my death, I transfer my interest in the described property to the beneficiaries as designated above.

Before my death, I have the right to revoke this deed.

SIGNATURE OF OWNER OR OWNERS MAKING THIS DEED

_____ [(SEAL)] _____

Signature

Date

_____ [(SEAL)] _____

Signature

Date

ACKNOWLEDGMENT

(insert acknowledgment for deed here)

(back of form)

COMMON QUESTIONS ABOUT THE USE OF THIS FORM

What does the Transfer on Death (TOD) deed do? When you die, this deed transfers the described property, subject to any liens or mortgages (or other encumbrances) on the property at your death. Probate is not required. The TOD deed has no effect until you die. You can revoke it at any time. You are also free to transfer the property to someone else during your lifetime. If you do not own any interest in the property when you die, this deed will have no effect.

How do I make a TOD deed? Complete this form. Have it acknowledged before a notary public or other individual authorized by law to take acknowledgments. Record the form in each county where any part of the property is located. The form has no effect unless it is acknowledged and recorded before your death.

Is the "legal description" of the property necessary? Yes.

How do I find the "legal description" of the property? This information may be on the deed you received when you became an owner of the property. This information may also be available in the office of the county clerk and recorder for the county where the property is located. If you are not absolutely sure, consult a lawyer.

Can I change my mind before I record the TOD deed? Yes. If you have not yet recorded the deed and want to change your mind, simply tear up or otherwise destroy the deed.

How do I "record" the TOD deed? Take the completed and acknowledged form to the office of the county clerk and recorder of the county where the property is located. Follow the instructions given by the county clerk and recorder to make the form part of the official property records. If the property is in more than one county, you should record the deed in each county.

Can I later revoke the TOD deed if I change my mind? Yes. You can revoke the TOD deed. No one, including the beneficiaries, can prevent you from revoking the deed.

How do I revoke the TOD deed after it is recorded? There are three ways to revoke a recorded TOD deed:

(1) Complete and acknowledge a revocation form, and record it in each county where the property is located.

(2) Complete and acknowledge a new TOD deed that disposes of the same property, and record it in each county where the property is located.

(3) Transfer the property to someone else during your lifetime by a recorded deed that expressly revokes the TOD deed. You may not revoke the TOD deed by will.

I am being pressured to complete this form. What should I do? Do not complete this form under pressure. Seek help from a trusted family member, friend, or lawyer.

Do I need to tell the beneficiaries about the TOD deed? No, but it is recommended. Secrecy can cause later complications and might make it easier for others to commit fraud.

I have other questions about this form. What should I do? This form is designed to fit some but not all situations. If you have other questions, you are encouraged to consult a lawyer.

Section 99. Optional form of revocation. The following form may be used to create an instrument of revocation under [sections 83 through 100]. The other sections of [sections 83 through 100] govern the effect of this or any other instrument used to revoke a transfer on death deed.

(front of form)

REVOCATION OF TRANSFER ON DEATH DEED

NOTICE TO OWNER

This revocation must be recorded before you die or it will not be effective. This revocation is effective only as to the interests in the property of owners who sign this revocation.

IDENTIFYING INFORMATION

Owner or Owners of Property Making This Revocation:

Printed name

Mailing address

Printed name

Mailing address

Legal description of the property:

REVOCATION

I revoke all my previous transfers of this property by transfer on death deed.

SIGNATURE OF OWNER OR OWNERS MAKING THIS REVOCATION

Signature

Date

Signature

Date

ACKNOWLEDGMENT

(insert acknowledgment here)

(back of form)

COMMON QUESTIONS ABOUT THE USE OF THIS FORM

How do I use this form to revoke a Transfer on Death (TOD) deed? Complete this form. Have it acknowledged before a notary public or other individual authorized to take acknowledgments. Record the form in the public records in the office of the county clerk and recorder of each county where the property is located. The form must

be acknowledged and recorded before your death or it has no effect.

How do I find the "legal description" of the property? This information may be on the TOD deed. It may also be available in the office of the county clerk and recorder for the county where the property is located. If you are not absolutely sure, consult a lawyer.

How do I "record" the form? Take the completed and acknowledged form to the office of the county clerk and recorder of deeds of the county where the property is located. Follow the instructions given by the county clerk and recorder to make the form part of the official property records. If the property is located in more than one county, you should record the form in each of those counties.

I am being pressured to complete this form. What should I do? Do not complete this form under pressure. Seek help from a trusted family member, friend, or lawyer.

I have other questions about this form. What should I do? This form is designed to fit some but not all situations. If you have other questions, consult a lawyer.

Section 100. Prior executed and recorded beneficiary deed. Any beneficiary deed that was executed and recorded prior to [the effective date of this act] and which complied with the law in effect when it was recorded, shall be deemed to be a transfer on death deed for the purposes of [sections 83 through 100].

Section 101. Section 72-7-401, MCA, is amended to read:

"72-7-401. Disclaimer. As provided by ~~72-2-811~~ sections 47 and 48:

- (1) a powerholder may disclaim all or part of a power of appointment; and
- (2) a permissible appointee, appointee, or taker in default of appointment may disclaim all or part of an interest in appointive property."

Section 102. Section 72-15-301, MCA, is amended to read:

"72-15-301. Compensation of public administrator. (1) The public administrator must receive and shall collect for the administrator's own use as full compensation for services under this chapter, ~~including attorney fees, the amounts~~ the amount provided for in 72-3-631 ~~and 72-3-633~~.

(2) When the public administrator is appointed conservator of the estate of a protected person pursuant to chapter 5, part 4, of this title, the court may order that a reasonable sum be deducted from payments due to

the protected person or from the protected person's estate to be paid to the public administrator as full compensation for the public administrator's services, excluding court costs and attorney fees. The total sum deducted as compensation for the public administrator may not be less than \$100."

Section 103. Directions to code commissioner. (1) The code commissioner is instructed to renumber 72-2-223, 72-2-225, 72-2-228, and 72-2-230 in accordance with the Uniform Probate Code.

(2) The code commissioner is instructed to change all internal references within and to the renumbered sections in the Montana Code Annotated, including within sections enacted or amended by the 2019 legislature, to reflect new section numbers assigned pursuant to this section.

Section 104. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 72, chapter 1, and the provisions of Title 72, chapter 1, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 72, and the provisions of Title 72 apply to [section 2].

(3) [Sections 12 through 22] are intended to be codified as an integral part of Title 72, chapter 2, part 2, and the provisions of Title 72, chapter 2, part 2, apply to [sections 12 through 22].

(4) [Sections 37 through 55] are intended to be codified as an integral part of Title 72, chapter 2, part 8, and the provisions of Title 72, chapter 2, part 8, apply to [sections 37 through 55].

(5) [Section 63] is intended to be codified as an integral part of Title 72, chapter 3, part 3, and the provisions of Title 72, chapter 3, part 3, apply to [section 63].

(6) [Section 72] is intended to be codified as an integral part of Title 72, chapter 3, part 6, and the provisions of Title 72, chapter 3, part 6, apply to [section 72].

(7) [Section 82] is intended to be codified as an integral part of Title 72, chapter 6, part 1, and the provisions of Title 72, chapter 6, part 1, apply to [section 82].

(8) [Sections 83 through 100] are intended to be codified as an integral part of Title 72, chapter 6, and the provisions of Title 72, chapter 6, apply to [sections 83 through 100].

Section 105. Repealer. The following sections of the Montana Code Annotated are repealed:

72-2-215. Reporting duty of personal representative in estate involving alien heir.

- 72-2-221. Elective share.
- 72-2-222. Augmented estate.
- 72-2-224. Waiver of right to elect and of other rights.
- 72-2-226. Effect of election on statutory benefits.
- 72-2-227. Sources from which elective share payable.
- 72-2-811. Disclaimer of property interests.
- 72-3-113. Rules for determining location of property.
- 72-3-309. Testimony of attesting witnesses in contested cases -- presumptions for self-proved will.
- 72-3-633. Compensation of attorney.
- 72-6-121. Beneficiary deed -- form -- definitions.
- 72-6-123. Liability for creditor claims and statutory allowances.

- END -

I hereby certify that the within bill,
SB 0225, originated in the Senate.

President of the Senate

Signed this _____ day
of _____, 2019.

Secretary of the Senate

Speaker of the House

Signed this _____ day
of _____, 2019.

SENATE BILL NO. 225

INTRODUCED BY S. FITZPATRICK, K. DUDIK, J. KRAUTTER, M. MCNALLY, B. MERCER

AN ACT GENERALLY REVISING THE PROVISIONS OF THE UNIFORM PROBATE CODE; REVISING ESTATES, TRUSTS, AND FIDUCIARY RELATIONSHIP LAWS; ADOPTING THE UNIFORM DISCLAIMER OF PROPERTY INTERESTS ACT; ADOPTING THE UNIFORM REAL PROPERTY TRANSFER ON DEATH ACT; AMENDING SECTIONS 72-1-103, 72-1-201, 72-1-208, 72-1-302, 72-1-303, 72-2-112, 72-2-114, 72-2-116, 72-2-118, 72-2-223, 72-2-225, 72-2-228, 72-2-230, 72-2-412, 72-2-413, 72-2-415, 72-2-613, 72-2-616, 72-2-712, 72-2-716, 72-2-717, 72-2-813, 72-2-814, 72-3-102, 72-3-112, 72-3-122, 72-3-131, 72-3-201, 72-3-202, 72-3-203, 72-3-401, 72-3-404, 72-3-502, 72-3-504, 72-3-514, 72-3-607, 72-3-611, 72-3-613, 72-3-618, 72-3-631, 72-3-803, 72-3-815, 72-3-917, 72-3-1012, 72-3-1013, 72-4-203, 72-6-111, 72-7-401, AND 72-15-301, MCA; AND REPEALING SECTIONS 72-2-215, 72-2-221, 72-2-222, 72-2-224, 72-2-226, 72-2-227, 72-2-811, 72-3-113, 72-3-309, 72-3-633, 72-6-121, AND 72-6-123, MCA.

SENATE BILL NO. 225

INTRODUCED BY S. FITZPATRICK

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE PROVISIONS OF THE UNIFORM PROBATE CODE; REVISING ESTATES, TRUSTS, AND FIDUCIARY RELATIONSHIP LAWS; ADOPTING THE UNIFORM DISCLAIMER OF PROPERTY INTERESTS ACT; ADOPTING THE UNIFORM REAL PROPERTY TRANSFER ON DEATH ACT; AMENDING SECTIONS 72-1-103, 72-1-201, 72-1-208, 72-1-302, 72-1-303, 72-2-112, 72-2-114, 72-2-116, 72-2-118, 72-2-223, 72-2-225, 72-2-228, 72-2-230, 72-2-412, 72-2-413, 72-2-415, 72-2-613, 72-2-616, 72-2-712, 72-2-716, 72-2-717, 72-2-813, 72-2-814, 72-3-102, 72-3-112, 72-3-122, 72-3-131, 72-3-201, 72-3-202, 72-3-203, 72-3-401, 72-3-404, 72-3-502, 72-3-504, 72-3-514, 72-3-607, 72-3-611, 72-3-613, 72-3-618, 72-3-631, 72-3-803, 72-3-815, 72-3-917, 72-3-1012, 72-3-1013, 72-4-203, 72-6-111, 72-6-213, 72-7-305, 72-7-401, AND 72-15-301, MCA; AND REPEALING SECTIONS 72-2-124, 72-2-215, 72-2-221, 72-2-222, 72-2-224, 72-2-226, 72-2-227, 72-2-715, 72-2-811, 72-2-1017, 72-3-113, 72-3-309, 72-3-633, 72-6-121, AND 72-6-123, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Purpose -- rule of construction. (1) This code shall be liberally construed and applied to promote its underlying purposes and policies.

(2) The underlying purposes and policies of this code are to:

(a) simplify and clarify the law concerning the affairs of decedents, missing persons, protected persons, minors, and incapacitated persons;

(b) discover and make effective the intent of a decedent in distribution of the decedent's property;

(c) promote a speedy and efficient system for liquidating the estate of the decedent and making distribution to the decedent's successors;

(d) facilitate use and enforcement of certain trusts; and

(e) make uniform the law among the various jurisdictions.

NEW SECTION. Section 2. Severability. If any provision of this code or the application of this code to any person or circumstances is held invalid, the invalidity may not affect other provisions or applications of the

code which can be given effect without the invalid provision or application, and to this end the provisions of this code are declared to be severable.

Section 3. Section 72-1-103, MCA, is amended to read:

"72-1-103. General definitions. Subject to additional definitions contained in the subsequent chapters that are applicable to specific chapters, parts, or sections and unless the context otherwise requires, in chapters 1 through 6, the following definitions apply:

(1) "Agent" includes an attorney-in-fact under a durable or nondurable power of attorney, an individual authorized to make decisions concerning another's health care, and an individual authorized to make decisions for another under a natural death act.

(2) "Application" means a written request to the clerk for an order of informal probate or appointment under chapter 3, part 2.

(3) "Beneficiary", as it relates to:

(a) a trust beneficiary, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer;

(b) a charitable trust, includes any person entitled to enforce the trust;

(c) a beneficiary of a beneficiary designation, refers to a beneficiary of:

(i) an account with POD designation or a security registered in beneficiary form (TOD); or

(ii) any other nonprobate transfer at death; and

(d) a beneficiary designated in a governing instrument, includes a grantee of a deed, a devisee, a trust beneficiary, a beneficiary of a beneficiary designation, a donee, and a person in whose favor a power of attorney or a power held in any individual, fiduciary, or representative capacity is exercised.

(4) "Beneficiary designation" refers to a governing instrument naming a beneficiary of:

(a) an account with POD designation or a security registered in beneficiary form (TOD); or

(b) any other nonprobate transfer at death.

(5) "Child" includes an individual entitled to take as a child under chapters 1 through 5 by intestate succession from the parent whose relationship is involved and excludes a person who is only a stepchild, a foster child, a grandchild, or any more remote descendant.

(6) (a) "Claims", in respect to estates of decedents and protected persons, includes liabilities of the decedent or protected person, whether arising in contract, in tort, or otherwise, and liabilities of the estate that

1 arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses
2 and expenses of administration.

3 (b) The term does not include estate taxes or demands or disputes regarding title of a decedent or
4 protected person to specific assets alleged to be included in the estate.

5 (7) "Clerk" or "clerk of court" means the clerk of the district court.

6 (8) "Conservator" means a person who is appointed by a court to manage the estate of a protected
7 person.

8 (9) "Court" means the district court in this state having jurisdiction in matters relating to the affairs of
9 decedents.

10 (10) "Descendant" of an individual means all of the individual's descendants of all generations, with the
11 relationship of parent and child at each generation being determined by the definition of child and parent
12 contained in this ~~section~~ code.

13 (11) "Devise" when used as a noun means a testamentary disposition of real or personal property and
14 when used as a verb means to dispose of real or personal property by will.

15 (12) "Devisee" means a person designated in a will to receive a devise. For purposes of chapter 3, in the
16 case of a devise to an existing trust or trustee or to a trustee or trust described by will, the trust or trustee is the
17 devisee and the beneficiaries are not devisees.

18 (13) "Disability" means cause for a protective order as described by 72-5-409.

19 (14) "Distributee" means any person who has received property of a decedent from the decedent's
20 personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the
21 extent of distributed assets or increment to distributed assets remaining in the trustee's hands. A beneficiary of
22 a testamentary trust to whom the trustee has distributed property received from a personal representative is a
23 distributee of the personal representative. For purposes of this provision, "testamentary trustee" includes a trustee
24 to whom assets are transferred by will, to the extent of the devised assets.

25 (15) "Estate" includes the property of the decedent, trust, or other person whose affairs are subject to
26 chapters 1 through 5 as originally constituted and as it exists from time to time during administration.

27 (16) "Exempt property" means that property of a decedent's estate that is described in 72-2-413.

28 (17) "Fiduciary" includes a personal representative, guardian, conservator, and trustee.

29 (18) "Foreign personal representative" means a personal representative appointed by another jurisdiction.

30 (19) "Formal proceedings" means proceedings conducted before a judge with notice to interested

1 persons.

2 (20) "Governing instrument" means a deed; will; trust; insurance or annuity policy; account with POD
3 designation; security registered in beneficiary form (TOD); pension, profit-sharing, retirement, or similar benefit
4 plan; instrument creating or exercising a power of appointment or a power of attorney; or dispositive, appointive,
5 or nominative instrument of any similar type.

6 (21) "Guardian" means a person who has qualified as a guardian of a minor or incapacitated person
7 pursuant to testamentary or court appointment but excludes one who is merely a guardian ad litem.

8 (22) "Heirs", except as controlled by 72-2-721, means persons, including the surviving spouse and the
9 state, who are entitled under the statutes of intestate succession to the property of a decedent.

10 (23) "Incapacitated person" has the meaning provided in 72-5-101.

11 (24) "Informal proceedings" means proceedings conducted without notice to interested persons by the
12 clerk of court for probate of a will or appointment of a personal representative.

13 (25) "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries, and any
14 others having a property right in or claim against a trust estate or the estate of a decedent, ward, or protected
15 person. The term also includes persons having priority for appointment as personal representative and other
16 fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time
17 to time and must be determined according to the particular purposes of and matter involved in any proceeding.

18 (26) "Issue" of a person means a descendant.

19 (27) "Joint tenants with the right of survivorship" includes co-owners of property held under circumstances
20 that entitle one or more to the whole of the property on the death of the other or others but excludes forms of
21 co-ownership registration in which the underlying ownership of each party is in proportion to that party's
22 contribution.

23 (28) "Lease" includes an oil, gas, coal, or other mineral lease.

24 (29) "Letters" includes letters testamentary, letters of guardianship, letters of administration, and letters
25 of conservatorship.

26 (30) "Minor" means a person who is under 18 years of age.

27 (31) "Mortgage" means any conveyance, agreement, or arrangement in which property is used as
28 security.

29 (32) "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of
30 death.

(33) "Organization" means a corporation, business trust, estate, trust, partnership, joint venture, association, government or governmental subdivision or agency, or any other legal or commercial entity.

(34) "Parent" includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under chapters 1 through 5 by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent, or grandparent.

(35) "Payor" means a trustee, insurer, business entity, employer, government, governmental agency or subdivision, or any other person authorized or obligated by law or a governing instrument to make payments.

(36) "Person" means an individual, a corporation, an organization, or other legal entity.

(37) "Personal representative" includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status. "General personal representative" excludes special administrator.

(38) "Petition" means a written request to the court for an order after notice.

(39) "Proceeding" includes action at law and suit in equity.

(40) "Property" includes both real and personal property or any interest in that property and means anything that may be the subject of ownership.

(41) "Protected person" has the meaning provided in 72-5-101.

(42) "Protective proceeding" has the meaning provided in 72-5-101.

(43) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

~~(43)~~(44) "Security" includes any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; collateral trust certificate; transferable share; voting trust certificate; in general, any interest or instrument commonly known as a security; any certificate of interest or participation; or any temporary or interim certificate, receipt, or certificate of deposit for or any warrant or right to subscribe to or purchase any of the foregoing.

~~(44)~~(45) "Settlement", in reference to a decedent's estate, includes the full process of administration, distribution, and closing.

(46) "Sign" means, with present intent to authenticate or adopt a record other than a will:

(a) to execute or adopt a tangible symbol; or

(b) to attach to or logically associate with the record an electronic symbol, sound, or process.

~~(45)~~(47) "Special administrator" means a personal representative as described by chapter 3, part 7.

~~(46)~~(48) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

~~(47)~~(49) "Successor personal representative" means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.

~~(48)~~(50) "Successors" means persons, other than creditors, who are entitled to property of a decedent under the decedent's will or chapters 1 through 5.

~~(49)~~(51) "Supervised administration" refers to the proceedings described in chapter 3, part 4.

~~(50)~~(52) "Survive" means that an individual has neither predeceased an event, including the death of another individual, nor is considered to have predeceased an event under 72-2-114 or 72-2-712. The term includes its derivatives, such as "survives", "survived", "survivor", and "surviving".

~~(51)~~(53) "Testacy proceeding" means a proceeding to establish a will or determine intestacy.

~~(52)~~(54) "Testator" includes an individual of either sex.

~~(53)~~(55) "Trust" includes an express trust, private or charitable, with additions to the trust, wherever and however created. The term also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. The term excludes other constructive trusts and excludes resulting trusts; conservatorships; personal representatives; trust accounts as defined in 72-6-111 and Title 72, chapter 6, parts 2 and 3; custodial arrangements pursuant to chapter 26; business trusts providing for certificates to be issued to beneficiaries; common trust funds; voting trusts; security arrangements; liquidation trusts; trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind; and any arrangement under which a person is nominee or escrowee for another.

~~(54)~~(56) "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by court.

~~(55)~~(57) "Ward" means an individual described in 72-5-101.

~~(56)~~(58) "Will" includes codicil and any testamentary instrument that merely appoints an executor, revokes or revises another will, nominates a guardian, or expressly excludes or limits the right of an individual or class to succeed to property of the decedent passing by intestate succession."

Section 4. Section 72-1-201, MCA, is amended to read:

"72-1-201. Territorial application. Except as otherwise provided in this code, this code applies to:

- 1 (1) the affairs and estates of decedents, missing persons, and persons to be protected in this state;
2 (2) the property of nonresidents located in this state or property coming into the control of a fiduciary who
3 is subject to the laws of this state; ~~and~~
4 (3) incapacitated persons and minors in this state; and
5 (4) survivorship and related accounts in this state."
6

7 **Section 5.** Section 72-1-208, MCA, is amended to read:

8 **"72-1-208. Jury trial.** (1) If duly demanded, a party is entitled to trial by jury in a formal testacy
9 proceeding, ~~a formal proceeding for determination of heirship, and any other proceeding as may be provided for~~
10 ~~by law and any proceeding in which any controverted question of fact arises as to which any party has a~~
11 constitutional right to trial by jury.

12 (2) If there is no right to trial by jury under subsection (1) or the right is waived, the court in its discretion
13 may call a jury to decide any issue of fact, in which case the verdict is advisory only."
14

15 **Section 6.** Section 72-1-302, MCA, is amended to read:

16 **"72-1-302. Waiver of notice.** A person, including a guardian ad litem, conservator, or other fiduciary,
17 may waive notice by a writing signed by the person or the person's attorney and filed in the proceeding. A person
18 for whom a guardianship or other protective order is sought, a ward, or a protected person may not waive notice."
19

20 **Section 7.** Section 72-1-303, MCA, is amended to read:

21 **"72-1-303. Pleadings -- when orders or notice binding one binds another -- representation.** In
22 formal proceedings involving trusts or estates of decedents, minors, protected persons, or incapacitated persons
23 and in judicially supervised settlements, the following apply:

24 (1) Interests to be affected must be described in pleadings that give reasonable information to owners
25 by name or class, by reference to the instrument creating the interests, or in other appropriate manner.

26 (2) Persons are bound by orders binding others in the following cases:

27 (a) Orders binding the sole holder or all coholders of a power of revocation or a presently exercisable
28 general power of appointment, including one in the form of a power of amendment, bind other persons to the
29 extent their interests, as objects, takers in default, or otherwise, are subject to the power.

30 (b) (i) To the extent there is no conflict of interest between them or among persons represented, orders

1 binding a:

2 (A) conservator bind the person whose estate the conservator controls;

3 (B) guardian bind the ward if a conservator of the ward's estate has not been appointed;

4 (C) trustee bind beneficiaries of the trust in proceedings to probate a will establishing or adding to a trust,
5 to review the acts or accounts of a prior fiduciary, and in proceedings involving creditors or other third parties;

6 and

7 (D) personal representative bind persons interested in the undistributed assets of a decedent's estate
8 in actions or proceedings by or against the estate; and

9 (E) a sole holder or all co-holders of a general testamentary power of appointment binds other persons
10 to the extent their interests as objects, takers in default, or otherwise are subject to the power.

11 (ii) If there is no conflict of interest and a conservator or guardian has not been appointed, a parent may
12 represent the parent's minor child.

13 (c) An unborn or unascertained person who is not otherwise represented is bound by an order to the
14 extent the person's interest is adequately represented by another party having a substantially identical interest
15 in the proceeding.

16 (3) Notice is required as follows:

17 (a) Notice as prescribed by 72-1-301 must be given to every interested person or to one who can bind
18 an interested person as described in subsection (2)(a) or (2)(b). Notice may be given both to a person and to
19 another who may bind the person.

20 (b) Notice is given to unborn or unascertained persons, who are not represented under subsection (2)(a)
21 or (2)(b), by giving notice to all known persons whose interests in the proceedings are substantially identical to
22 those of the unborn or unascertained persons.

23 (4) At any point in a proceeding, a court may appoint a guardian ad litem to represent the interest of a
24 minor, an incapacitated, unborn, or unascertained person, or a person whose identity or address is unknown if
25 the court determines that representation of the interest otherwise would be inadequate. If not precluded by conflict
26 of interests, a guardian ad litem may be appointed to represent several persons or interests. The court shall set
27 out its reasons for appointing a guardian ad litem as a part of the record of the proceeding."

28
29 **Section 8.** Section 72-2-112, MCA, is amended to read:

30 **"72-2-112. Share of spouse.** The intestate share of a decedent's surviving spouse is:

(1) the entire intestate estate if:

(a) no descendant or parent of the decedent survives the decedent; or

(b) all of the decedent's surviving descendants are also descendants of the surviving spouse and there is no other descendant of the surviving spouse who survives the decedent;

(2) the first ~~\$200,000~~ \$300,000, plus three-fourths of any balance of the intestate estate, if no descendant of the decedent survives the decedent but a parent of the decedent survives the decedent;

(3) the first ~~\$150,000~~ \$225,000, plus one-half of any balance of the intestate estate, if all of the decedent's surviving descendants are also descendants of the surviving spouse and the surviving spouse has one or more surviving descendants who are not descendants of the decedent;

(4) the first ~~\$100,000~~ \$150,000, plus one-half of any balance of the intestate estate, if one or more of the decedent's surviving descendants are not descendants of the surviving spouse."

Section 9. Section 72-2-114, MCA, is amended to read:

"72-2-114. Requirement that heir survive decedent for 120 hours. An individual who fails to survive the decedent by 120 hours is ~~considered~~ deemed to have predeceased the decedent for purposes of homestead allowance, exempt property, and intestate succession, and the decedent's heirs are determined accordingly. If it is not established by clear and convincing evidence that an individual who would otherwise be an heir survived the decedent by 120 hours, it is ~~considered~~ deemed that the individual failed to survive for the required period. This section is not to be applied if its application would result in a taking of intestate estate by the state under 72-2-115."

Section 10. Section 72-2-116, MCA, is amended to read:

"72-2-116. Representation. (1) As used in this section, the following definitions apply:

(a) "Deceased descendant", "deceased parent", or "deceased grandparent" means a descendant, parent, or grandparent who either predeceased the decedent or is ~~considered~~ deemed to have predeceased the decedent under 72-2-114.

(b) "Surviving descendant" means a descendant who neither predeceased the decedent nor is ~~considered~~ deemed to have predeceased the decedent under 72-2-114.

(2) (a) If, under 72-2-113(1)(a), a decedent's intestate estate or a part of the intestate estate passes by representation to the decedent's descendants, the estate or part of the estate is divided into as many equal

1 shares as there are:

2 (i) surviving descendants in the generation nearest to the decedent that contains one or more surviving
3 descendants; and

4 (ii) deceased descendants in the same generation who left surviving descendants, if any.

5 (b) Each surviving descendant in the nearest generation is allocated one share. The share of each
6 deceased descendant in the same generation as the surviving descendant is divided in the same manner, with
7 the subdivision repeating at each succeeding generation until the property is fully allocated among surviving
8 descendants.

9 (3) (a) If, under 72-2-113(1)(c) or (1)(d), a decedent's intestate estate or a part of the intestate estate
10 passes by representation to the descendants of the decedent's deceased parents or either of them or to the
11 descendants of the decedent's deceased paternal or maternal grandparents or either of them, the estate or part
12 of the estate is divided into as many equal shares as there are:

13 (i) surviving descendants in the generation nearest the deceased parents or either of them or nearest
14 the deceased grandparents or either of them that contains one or more surviving descendants; and

15 (ii) deceased descendants in the same generation who left surviving descendants, if any.

16 (b) Each surviving descendant in the nearest generation is allocated one share. The share of each
17 deceased descendant in the same generation as the surviving descendant is divided in the same manner, with
18 the subdivision repeating at each succeeding generation until the property is fully allocated among surviving
19 descendants."
20

21 **Section 11.** Section 72-2-118, MCA, is amended to read:

22 **"72-2-118. Afterborn heirs.** An individual in gestation at a particular time is treated as living at that time
23 if the individual lives 120 hours or more after birth. If it is not established by clear and convincing evidence that
24 an individual in gestation at the decedent's death lived 120 hours after birth, it is deemed that the individual failed
25 to survive for the required period."
26

27 **NEW SECTION. Section 12. Parent barred from inheriting in certain circumstances.** (1) A parent
28 is barred from inheriting from or through a child of the parent if:

29 (a) the parent's parental rights were terminated and the parent-child relationship was not judicially
30 reestablished; or

(b) the child died before reaching 18 years of age and there is clear and convincing evidence that immediately before the child's death the parental rights of the parent could have been terminated under law of this state other than this code on the basis of nonsupport, abandonment, abuse, neglect, or other actions or inactions of the parent toward the child.

(2) For the purpose of intestate succession from or through the deceased child, a parent who is barred from inheriting under this section is treated as if the parent predeceased the child.

NEW SECTION. Section 13. Definitions. In [sections 13 through 19]:

(1) "Adoptee" means an individual who is adopted.

(2) "Assisted reproduction" means a method of causing pregnancy other than sexual intercourse.

(3) "Divorce" includes an annulment, dissolution, and declaration of invalidity of a marriage.

(4) "Functioned as a parent of the child" means behaving toward a child in a manner consistent with being the child's parent and performing functions that are customarily performed by a parent, including fulfilling parental responsibilities toward the child, recognizing or holding out the child as the individual's child, materially participating in the child's upbringing, and residing with the child in the same household as a regular member of that household.

(5) "Genetic father" means the man whose sperm fertilized the egg of a child's genetic mother. If the father-child relationship is established under the presumption of paternity under 40-6-105, the term means only the man for whom that relationship is established.

(6) "Genetic mother" means the woman whose egg was fertilized by the sperm of a child's genetic father.

(7) "Genetic parent" means a child's genetic father or genetic mother.

(8) "Incapacity" means the inability of an individual to function as a parent of a child because of the individual's physical or mental condition.

(9) "Relative" means a grandparent or a descendant of a grandparent.

NEW SECTION. Section 14. Effect of parent-child relationship. Except as otherwise provided in [section 17(2) through (5)], if a parent-child relationship exists or is established under [sections 13 through 19], the parent is a parent of the child and the child is a child of the parent for the purpose of intestate succession.

NEW SECTION. Section 15. No distinction based on marital status. Except as otherwise provided

1 in [sections 12, 17, 18, or 19], a parent-child relationship exists between a child and the child's genetic parents,
2 regardless of the parents' marital status.

3
4 **NEW SECTION. Section 16. Adoptee and adoptee's adoptive parent or parents.** (1) A parent-child
5 relationship exists between an adoptee and the adoptee's adoptive parent or parents.

6 (2) For purposes of subsection (1):

7 (a) an individual who is in the process of being adopted by a married couple when one of the spouses
8 dies is treated as adopted by the deceased spouse if the adoption is subsequently granted to the decedent's
9 surviving spouse; and

10 (b) a child of a genetic parent who is in the process of being adopted by a genetic parent's spouse when
11 the spouse dies is treated as adopted by the deceased spouse if the genetic parent survives the deceased
12 spouse by 120 hours.

13 (3) If, after a parent-child relationship is established between a child of assisted reproduction and a parent
14 under [section 18] or between a gestational child and a parent under [section 19], the child is in the process of
15 being adopted by the parent's spouse when that spouse dies, the child is treated as adopted by the deceased
16 spouse for the purpose of subsection (2)(b).

17
18 **NEW SECTION. Section 17. Adoptee and adoptee's genetic parents.** (1) Except as otherwise
19 provided in subsections (2) through (5), a parent-child relationship does not exist between an adoptee and the
20 adoptee's genetic parents.

21 (2) A parent-child relationship exists between an individual who is adopted by the spouse of either genetic
22 parent and:

23 (a) the genetic parent whose spouse adopted the individual; and

24 (b) the other genetic parent, but only for the purpose of the right of the adoptee or a descendant of the
25 adoptee to inherit from or through the other genetic parent.

26 (3) A parent-child relationship exists between both genetic parents and an individual who is adopted by
27 a relative of a genetic parent, or by the spouse or surviving spouse of a relative of a genetic parent, but only for
28 the purpose of the right of the adoptee or a descendant of the adoptee to inherit from or through either genetic
29 parent.

30 (4) A parent-child relationship exists between both genetic parents and an individual who is adopted after

1 the death of both genetic parents, but only for the purpose of the right of the adoptee or a descendant of the
2 adoptee to inherit through either genetic parent.

3 (5) If, after a parent-child relationship is established between a child of assisted reproduction and a parent
4 or parents under [section 18] or between a gestational child and a parent or parents under [section 19], the child
5 is adopted by another or others, the child's parent or parents under [sections 18 or 19] are treated as the child's
6 genetic parent or parents for the purpose of this section.

7
8 **NEW SECTION. Section 18. Child conceived by assisted reproduction other than child born to**
9 **gestational carrier.** (1) In this section:

10 (a) "Birth mother" means a woman, other than a gestational carrier under [section 19], who gives birth
11 to a child of assisted reproduction. The term is not limited to a woman who is the child's genetic mother.

12 (b) "Child of assisted reproduction" means a child conceived by means of assisted reproduction by a
13 woman other than a gestational carrier under [section 19].

14 (c) "Third-party donor" means an individual who produces eggs or sperm used for assisted reproduction,
15 whether or not for consideration. The term does not include:

16 (i) a husband who provides sperm, or a wife who provides eggs, that are used for assisted reproduction
17 by the wife;

18 (ii) the birth mother of a child of assisted reproduction; or

19 (iii) an individual who has been determined under subsection (5) or (6) to have a parent-child relationship
20 with a child of assisted reproduction.

21 (2) A parent-child relationship does not exist between a child of assisted reproduction and a third-party
22 donor.

23 (3) A parent-child relationship exists between a child of assisted reproduction and the child's birth mother.

24 (4) Except as otherwise provided in subsections (9) and (10), a parent-child relationship exists between
25 a child of assisted reproduction and the husband of the child's birth mother if the husband provided the sperm
26 that the birth mother used during his lifetime for assisted reproduction.

27 (5) A birth certificate identifying an individual other than the birth mother as the other parent of a child of
28 assisted reproduction presumptively establishes a parent-child relationship between the child and that individual.

29 (6) Except as otherwise provided in subsections (7), (9), and (10), and unless a parent-child relationship
30 is established under subsection (4) or (5), a parent-child relationship exists between a child of assisted

1 reproduction and an individual other than the birth mother who consented to assisted reproduction by the birth
2 mother with intent to be treated as the other parent of the child. Consent to assisted reproduction by the birth
3 mother with intent to be treated as the other parent of the child is established if the individual:

4 (a) before or after the child's birth, signed a record that, considering all the facts and circumstances,
5 evidences the individual's consent; or

6 (b) in the absence of a signed record under subsection (6)(a):

7 (i) functioned as a parent of the child no later than 2 years after the child's birth;

8 (ii) intended to function as a parent of the child no later than 2 years after the child's birth but was
9 prevented from carrying out that intent by death, incapacity, or other circumstances; or

10 (iii) intended to be treated as a parent of a posthumously conceived child, if that intent is established by
11 clear and convincing evidence.

12 (7) For the purpose of subsection (6)(a), neither an individual who signed a record more than 2 years
13 after the birth of the child, nor a relative of that individual who is not also a relative of the birth mother, inherits
14 from or through the child unless the individual functioned as a parent of the child before the child reached 18
15 years of age.

16 (8) For the purpose of subsection (6)(b), the following rules apply:

17 (a) If the birth mother is married and no divorce proceeding is pending, in the absence of clear and
18 convincing evidence to the contrary, her spouse satisfies subsection (6)(b)(i) or (ii).

19 (b) If the birth mother is a surviving spouse and at her deceased spouse's death no divorce proceeding
20 was pending, in the absence of clear and convincing evidence to the contrary, her deceased spouse satisfies
21 subsection (6)(b)(ii) or (iii).

22 (9) If a married couple is divorced before placement of eggs, sperm, or embryos, a child resulting from
23 the assisted reproduction is not a child of the birth mother's former spouse, unless the former spouse consented
24 in a record that if assisted reproduction were to occur after divorce, the child would be treated as the former
25 spouse's child.

26 (10) If, in a record, an individual withdraws consent to assisted reproduction before placement of eggs,
27 sperm, or embryos, a child resulting from the assisted reproduction is not a child of that individual, unless the
28 individual subsequently satisfies subsection (6).

29 (11) If, under this section, an individual is a parent of a child of assisted reproduction who is conceived
30 after the individual's death, the child is treated as in gestation at the individual's death for purposes of 72-2-118

1 if the child is:

2 (a) in utero not later than 36 months after the individual's death; or

3 (b) born not later than 45 months after the individual's death.

4

5 **NEW SECTION.** **Section 19. Child born to gestational carrier.** (1) In this section:

6 (a) "Gestational agreement" means an enforceable or unenforceable agreement for assisted reproduction
7 in which a woman agrees to carry a child to birth for an intended parent, intended parents, or an individual
8 described in subsection (5).

9 (b) "Gestational carrier" means a woman who is not an intended parent who gives birth to a child under
10 a gestational agreement. The term is not limited to a woman who is the child's genetic mother.

11 (c) "Gestational child" means a child born to a gestational carrier under a gestational agreement.

12 (d) "Intended parent" means an individual who entered into a gestational agreement providing that the
13 individual will be the parent of a child born to a gestational carrier by means of assisted reproduction. The term
14 is not limited to an individual who has a genetic relationship with the child.

15 (2) A parent-child relationship is conclusively established by a court order designating the parent or
16 parents of a gestational child.

17 (3) A parent-child relationship between a gestational child and the child's gestational carrier does not exist
18 unless the gestational carrier is:

19 (a) designated as a parent of the child in a court order described in subsection (2); or

20 (b) the child's genetic mother and a parent-child relationship does not exist under this section with an
21 individual other than the gestational carrier.

22 (4) In the absence of a court order under subsection (2), a parent-child relationship exists between a
23 gestational child and an intended parent who:

24 (a) functioned as a parent of the child no later than 2 years after the child's birth; or

25 (b) died while the gestational carrier was pregnant if:

26 (i) there were two intended parents and the other intended parent functioned as a parent of the child no
27 later than 2 years after the child's birth;

28 (ii) there were two intended parents, the other intended parent also died while the gestational carrier was
29 pregnant, and a relative of either deceased intended parent or the spouse or surviving spouse of a relative of
30 either deceased intended parent functioned as a parent of the child no later than 2 years after the child's birth;

1 or

2 (iii) there was no other intended parent and a relative of or the spouse or surviving spouse of a relative
3 of the deceased intended parent functioned as a parent of the child no later than 2 years after the child's birth.

4 (5) In the absence of a court order under subsection (2), a parent-child relationship exists between a
5 gestational child and an individual whose sperm or eggs were used after the individual's death or incapacity to
6 conceive a child under a gestational agreement entered into after the individual's death or incapacity if the
7 individual intended to be treated as the parent of the child. The individual's intent may be shown by:

8 (a) a record signed by the individual which considering all the facts and circumstances evidences the
9 individual's intent; or

10 (b) other facts and circumstances establishing the individual's intent by clear and convincing evidence.

11 (6) Except as otherwise provided in subsection (7), and unless there is clear and convincing evidence
12 of a contrary intent, an individual is deemed to have intended to be treated as the parent of a gestational child
13 for purposes of subsection (5)(b) if:

14 (a) the individual, before death or incapacity, deposited the sperm or eggs that were used to conceive
15 the child;

16 (b) when the individual deposited the sperm or eggs, the individual was married and no divorce
17 proceeding was pending; and

18 (c) the individual's spouse or surviving spouse functioned as a parent of the child no later than 2 years
19 after the child's birth.

20 (7) The presumption under subsection (6) does not apply if there is:

21 (a) a court order under subsection (2); or

22 (b) a signed record that satisfies subsection (5)(a).

23 (8) If, under this section, an individual is a parent of a gestational child who is conceived after the
24 individual's death, the child is treated as in gestation at the individual's death for purposes of 72-2-118 if the child
25 is:

26 (a) in utero not later than 36 months after the individual's death; or

27 (b) born not later than 45 months after the individual's death.

28 (9) This section does not affect law of this state other than this code regarding the enforceability or validity
29 of a gestational agreement.

30

1 **NEW SECTION.** **Section 20. Definitions.** In [sections 20 through 29]:

2 (1) As used in sections other than [section 24], "decedent's nonprobate transfers to others" means the
3 amounts that are included in the augmented estate under [section 24].

4 (2) "Fractional interest in property held in joint tenancy with the right of survivorship," whether the
5 fractional interest is unilaterally severable or not, means the fraction, the numerator of which is one and the
6 denominator of which, if the decedent was a joint tenant, is one plus the number of joint tenants who survive the
7 decedent and which, if the decedent was not a joint tenant, is the number of joint tenants.

8 (3) "Marriage," as it relates to a transfer by the decedent during marriage, means any marriage of the
9 decedent to the decedent's surviving spouse.

10 (4) "Nonadverse party" means a person who does not have a substantial beneficial interest in the trust
11 or other property arrangement that would be adversely affected by the exercise or nonexercise of the power that
12 person possesses respecting the trust or other property arrangement. A person having a general power of
13 appointment over property is deemed to have a beneficial interest in the property.

14 (5) "Power" or "power of appointment" includes a power to designate the beneficiary of a beneficiary
15 designation.

16 (6) "Presently exercisable general power of appointment" means a power of appointment under which,
17 at the time in question, the decedent, whether or not the decedent then had the capacity to exercise the power,
18 held a power to create a present or future interest in the decedent, the decedent's creditors, the decedent's
19 estate, or creditors of the decedent's estate, and includes a power to revoke or invade the principal of a trust or
20 other property arrangement.

21 (7) "Property" includes values subject to a beneficiary designation.

22 (8) "Right to income" includes a right to payments under a commercial or private annuity, an annuity trust,
23 a unitrust, or a similar arrangement.

24 (9) "Transfer," as it relates to a transfer by or of the decedent, includes:

25 (a) an exercise or release of a presently exercisable general power of appointment held by the decedent;

26 (b) a lapse at death of a presently exercisable general power of appointment held by the decedent; and

27 (c) an exercise, release, or lapse of a general power of appointment that the decedent created in the
28 decedent and of a power described in [section 24(2)(b)] that the decedent conferred on a nonadverse party.

29
30 **NEW SECTION.** **Section 21. Elective share.** (1) The surviving spouse of a decedent who dies

domiciled in this state has a right of election, under the limitations and conditions stated in [sections 20 through 29], to take an elective-share amount equal to 50% of the value of the marital-property portion of the augmented estate.

(2) If the sum of the amounts described in [sections 26 and 28(1)(a)], and that part of the elective-share amount payable from the decedent's net probate estate and nonprobate transfers to others under [section 28(3) and (4)] is less than \$75,000, the surviving spouse is entitled to a supplemental elective-share amount equal to \$75,000, minus the sum of the amounts described in those sections. The supplemental elective-share amount is payable from the decedent's net probate estate and from recipients of the decedent's nonprobate transfers to others in the order of priority set forth in [section 28(3) and (4)].

(3) If the right of election is exercised by or on behalf of the surviving spouse, the surviving spouse's homestead allowance, exempt property, and family allowance, if any, are not charged against but are in addition to the elective-share and supplemental elective-share amounts.

(4) The right, if any, of the surviving spouse of a decedent who dies domiciled outside this state to take an elective share in property in this state is governed by the law of the decedent's domicile at death.

NEW SECTION. Section 22. Composition of the augmented estate. (1) Subject to [section 27], the value of the augmented estate, to the extent provided in [sections 23, 24, 25, and 26], consists of the sum of the values of all property, whether real or personal; movable or immovable, tangible or intangible, wherever situated, that constitute:

- (a) the decedent's net probate estate;
- (b) the decedent's nonprobate transfers to others;
- (c) the decedent's nonprobate transfers to the surviving spouse; and
- (d) the surviving spouse's property and nonprobate transfers to others.

(2) The value of the marital-property portion of the augmented estate consists of the sum of the values of the four components of the augmented estate as determined under subsection (1) multiplied by the following percentage:

If the decedent and the spouse	The percentage is:
were married to each other:	
Less than 1 year	3%
1 year but less than 2 years	6%

1	2 years but less than 3 years	12%
2	3 years but less than 4 years	18%
3	4 years but less than 5 years	24%
4	5 years but less than 6 years	30%
5	6 years but less than 7 years	36%
6	7 years but less than 8 years	42%
7	8 years but less than 9 years	48%
8	9 years but less than 10 years	54%
9	10 years but less than 11 years	60%
10	11 years but less than 12 years	68%
11	12 years but less than 13 years	76%
12	13 years but less than 14 years	84%
13	14 years but less than 15 years	92%
14	15 years or more	100%

15

16 **NEW SECTION. Section 23. Decedent's net probate estate.** The value of the augmented estate
 17 includes the value of the decedent's probate estate, reduced by funeral and administration expenses, homestead
 18 allowance, family allowances, exempt property, and enforceable claims.

19

20 **NEW SECTION. Section 24. Decedents's nonprobate transfers to others.** The value of the
 21 augmented estate includes the value of the decedent's nonprobate transfers to others, not included under [section
 22 23], of any of the following types, in the amount provided respectively for each type of transfer:

23 (1) Property owned or owned in substance by the decedent immediately before death that passed outside
 24 probate at the decedent's death. Property included under this category consists of:

25 (a) Property over which the decedent alone, immediately before death, held a presently exercisable
 26 general power of appointment. The amount included is the value of the property subject to the power, to the
 27 extent the property passed at the decedent's death, by exercise, release, lapse, in default, or otherwise, to or for
 28 the benefit of any person other than the decedent's estate or surviving spouse.

29 (b) The decedent's fractional interest in property held by the decedent in joint tenancy with the right of
 30 survivorship. The amount included is the value of the decedent's fractional interest, to the extent the fractional

1 interest passed by right of survivorship at the decedent's death to a surviving joint tenant other than the
2 decedent's surviving spouse.

3 (c) The decedent's ownership interest in property or accounts held in POD, TOD, or co-ownership
4 registration with the right of survivorship. The amount included is the value of the decedent's ownership interest,
5 to the extent the decedent's ownership interest passed at the decedent's death to or for the benefit of any person
6 other than the decedent's estate or surviving spouse.

7 (2) Property transferred in any of the following forms by the decedent during marriage:

8 (a) Any irrevocable transfer in which the decedent retained the right to the possession or enjoyment of,
9 or to the income from, the property if and to the extent the decedent's right terminated at or continued beyond
10 the decedent's death. The amount included is the value of the fraction of the property to which the decedent's
11 right related, to the extent the fraction of the property passed outside probate to or for the benefit of any person
12 other than the decedent's estate or surviving spouse.

13 (b) Any transfer in which the decedent created a power over income or property, exercisable by the
14 decedent alone or in conjunction with any other person, or exercisable by a nonadverse party, to or for the benefit
15 of the decedent, creditors of the decedent, the decedent's estate, or creditors of the decedent's estate. The
16 amount included with respect to a power over property is the value of the property subject to the power, and the
17 amount included with respect to a power over income is the value of the property that produces or produced the
18 income, to the extent the power in either case was exercisable at the decedent's death to or for the benefit of any
19 person other than the decedent's surviving spouse or to the extent the property passed at the decedent's death,
20 by exercise, release, lapse, in default, or otherwise, to or for the benefit of any person other than the decedent's
21 estate or surviving spouse. If the power is a power over both income and property and the preceding sentence
22 produces different amounts, the amount included is the greater amount.

23 (3) Property that passed during marriage and during the 2 year period next preceding the decedent's
24 death as a result of a transfer by the decedent if the transfer was of any of the following types:

25 (a) Any property that passed as a result of the termination of a right or interest in, or power over, property
26 that would have been included in the augmented estate under subsection (1)(a), (1)(b), or (1)(c), or under
27 subsection (2), if the right, interest, or power had not terminated until the decedent's death. The amount included
28 is the value of the property that would have been included under those subsections if the property were valued
29 at the time the right, interest, or power terminated, and is included only to the extent the property passed upon
30 termination to or for the benefit of any person other than the decedent or the decedent's estate, spouse, or

1 surviving spouse. As used in this subsection (3)(a), "termination," with respect to a right or interest in property,
2 occurs when the right or interest terminated by the terms of the governing instrument or the decedent transferred
3 or relinquished the right or interest, and, with respect to a power over property, occurs when the power terminated
4 by exercise, release, lapse, default, or otherwise, but, with respect to a power described in subsection (1)(a),
5 "termination" occurs when the power terminated by exercise or release, but not otherwise.

6 (b) Any transfer of property, to the extent not otherwise included in the augmented estate, made to or for
7 the benefit of a person other than the decedent's surviving spouse. The amount included is the value of the
8 transferred property to the extent the transfers to any one donee in either of the 2 years exceeded the amount
9 excludable from taxable gifts under 26 U.S.C. 2503(b) or its successor on the date next preceding the date of the
10 decedent's death.

11
12 **NEW SECTION. Section 25. Decedent's nonprobate transfers to surviving spouse.** Excluding
13 property passing to the surviving spouse under the federal social security system, the value of the augmented
14 estate includes the value of the decedent's nonprobate transfers to the decedent's surviving spouse, which
15 consist of all property that passed outside probate at the decedent's death from the decedent to the surviving
16 spouse by reason of the decedent's death, including:

17 (1) the decedent's fractional interest in property held as a joint tenant with the right of survivorship, to the
18 extent that the decedent's fractional interest passed to the surviving spouse as surviving joint tenant;

19 (2) the decedent's ownership interest in property or accounts held in co-ownership registration with the
20 right of survivorship, to the extent the decedent's ownership interest passed to the surviving spouse as surviving
21 co-owner; and

22 (3) all other property that would have been included in the augmented estate under [section 24(1) or (2)]
23 had it passed to or for the benefit of a person other than the decedent's spouse, surviving spouse, the decedent,
24 or the decedent's creditors, estate, or estate creditors.

25
26 **NEW SECTION. Section 26. Surviving spouse's property and nonprobate transfers to others.** (1)
27 Except to the extent included in the augmented estate under [sections 23 or 25], the value of the augmented
28 estate includes the value of:

29 (a) property that was owned by the decedent's surviving spouse at the decedent's death, including:

30 (i) the surviving spouse's fractional interest in property held in joint tenancy with the right of survivorship;

(ii) the surviving spouse's ownership interest in property or accounts held in co-ownership registration with the right of survivorship; and

(iii) property that passed to the surviving spouse by reason of the decedent's death, but not including the spouse's right to homestead allowance, family allowance, exempt property, or payments under the federal social security system; and

(b) property that would have been included in the surviving spouse's nonprobate transfers to others, other than the spouse's fractional and ownership interests included under subsection (1)(a)(i) or (1)(a)(ii), had the spouse been the decedent.

(2) Property included under this section is valued at the decedent's death, taking the fact that the decedent predeceased the spouse into account, but, for purposes of subsection (1)(a)(i) and (1)(a)(ii), the values of the spouse's fractional and ownership interests are determined immediately before the decedent's death if the decedent was then a joint tenant or a co-owner of the property or accounts.

(3) The value of property included under this section is reduced by enforceable claims against the surviving spouse.

NEW SECTION. Section 27. Exclusions, valuation, and overlapping application. (1) The value of any property is excluded from the decedent's nonprobate transfers to others:

(a) to the extent the decedent received adequate and full consideration in money or money's worth for a transfer of the property;

(b) if the property was transferred with the written joinder of, or if the transfer was consented to in writing before or after the transfer by, the surviving spouse; or

(c) if the property is life insurance or accident insurance payable to persons other than the decedent's surviving spouse or the decedent's estate.

(2) The value of property:

(a) included in the augmented estate under [sections 24, 25, or 26] is reduced in each category by enforceable claims against the included property; and

(b) includes the commuted value of any present or future interest and the commuted value of amounts payable under any trust, life insurance settlement option, annuity contract, public or private pension, disability compensation, death benefit or retirement plan, or any similar arrangement, exclusive of the federal social security system. The commuted value of life and term interests in income, annuity, or unitrust amount must be

1 determined in accordance with U.S. treasury regulations for internal revenue purposes in effect at the time of the
2 decedent's death.

3 (3) In case of overlapping application to the same property of [sections 24, 25, or 26], the property is
4 included in the augmented estate under the provision yielding the greatest value, and under only one overlapping
5 provision if they all yield the same value.

6
7 **NEW SECTION. Section 28. Sources from which elective share payable.** (1) In a proceeding for an
8 elective share, the following are applied first to satisfy the elective-share amount and to reduce or eliminate any
9 contributions due from the decedent's probate estate and recipients of the decedent's nonprobate transfers to
10 others:

11 (a) amounts included in the augmented estate under [section 23] which pass or have passed to the
12 surviving spouse by testate or intestate succession and amounts included in the augmented estate under [section
13 25];

14 (b) amounts included in the augmented estate that would have passed to the spouse but were
15 disclaimed; and

16 (c) the marital-property portion of amounts included in the augmented estate under [section 26].

17 (2) The marital-property portion under subsection (1)(b) is computed by multiplying the value of the
18 amounts included in the augmented estate under [section 26] by the percentage of the augmented estate set forth
19 in the schedule in [section 22(2)] appropriate to the length of time the spouse and the decedent were married to
20 each other.

21 (3) If, after the application of subsection (1), the elective-share amount is not fully satisfied, or the
22 surviving spouse is entitled to a supplemental elective-share amount, amounts included in the decedent's net
23 probate estate, other than assets passing to the surviving spouse by testate or intestate succession, and in the
24 decedent's nonprobate transfers to others under [section 24(1) and (2)] are applied first to satisfy the unsatisfied
25 balance of the elective-share amount or the supplemental elective-share amount. The decedent's net probate
26 estate and that portion of the decedent's nonprobate transfers to others are so applied that liability for the
27 unsatisfied balance of the elective-share amount or for the supplemental elective-
28 share amount is apportioned among the recipients of the decedent's net probate estate and of that portion of the
29 decedent's nonprobate transfers to others in proportion to the value of their interests.

30 (4) If, after the application of subsections (1) and (3), the elective-share or supplemental elective-share

1 amount is not fully satisfied, the remaining portion of the decedent's nonprobate transfers to others is so applied
2 that liability for the unsatisfied balance of the elective-share or supplemental elective-share amount is apportioned
3 among the recipients of the remaining portion of the decedent's nonprobate transfers to others in proportion to
4 the value of their interests therein.

5 (5) The unsatisfied balance of the elective-share or supplemental elective-share amount as determined
6 under subsection (3) or (4) is treated as a general pecuniary devise for purposes of 72-3-913.

7
8 **NEW SECTION. Section 29. Effect of premarital or marital agreement right to elect and of other**
9 **rights.** (1) In this section, "agreement" includes a subsequent agreement that affirms, modifies, or waives an
10 earlier agreement.

11 (2) The right of election of a surviving spouse and the rights of the surviving spouse to homestead
12 allowance, exempt property, and family allowance, or any of them, may be affirmed, modified, or waived wholly
13 or partially, only by a written agreement signed by the surviving spouse, before or after the marriage. The
14 agreement is enforceable without consideration.

15 (3) An agreement under subsection (2) is not enforceable if the surviving spouse proves that:

- 16 (a) the agreement was involuntary or the result of duress;
17 (b) the surviving spouse did not have access to independent legal representation under subsection (4);
18 (c) unless the surviving spouse had independent legal representation when the agreement was executed,
19 the agreement did not include an explanation in plain language of the rights under subsection (2) being affirmed,
20 modified, or waived; or
21 (d) before signing the agreement, the surviving spouse did not receive adequate financial disclosure
22 under subsection (5).

23 (4) A surviving spouse had access to independent legal representation if:

- 24 (a) before signing an agreement, the surviving spouse had a reasonable time to:
25 (i) decide whether to retain a lawyer to provide independent legal representation; and
26 (ii) locate a lawyer to provide independent legal representation, obtain the lawyer's advice, and consider
27 the advice provided; and
28 (b) the other spouse was represented by a lawyer and the surviving spouse had the financial ability to
29 retain a lawyer or the other spouse agreed to pay the reasonable fees and expenses of independent legal
30 representation.

(5) A surviving spouse had adequate financial disclosure under this section if the surviving spouse:

(a) received a reasonably accurate description and good-faith estimate of the value of the property, liabilities, and income of the other spouse;

(b) expressly waived, in a separate signed record, the right to financial disclosure beyond the disclosure provided; or

(c) had adequate knowledge or a reasonable basis for having adequate knowledge of the information described in subsection (5)(a).

(6) Unless an agreement under subsection (2) provides to the contrary, a waiver of "all rights," or equivalent language, in the property or estate of a present or prospective spouse or a complete property settlement entered into after or in anticipation of separation or divorce is a waiver of all rights of elective share, homestead allowance, exempt property, and family allowance by the spouse in the property of the other spouse and a renunciation of all benefits that would otherwise pass to the renouncing spouse by intestate succession or by virtue of any will executed before the waiver or property settlement.

Section 30. Section 72-2-223, MCA, is amended to read:

"72-2-223. Right of election personal to surviving spouse -- incapacitated surviving spouse. (1)

The right of election may be exercised only by a surviving spouse who is living when the petition for the elective share is filed in the court under 72-2-225(1). If the election is not exercised by the surviving spouse personally, it may be exercised on the surviving spouse's behalf by the surviving spouse's conservator, guardian, or agent under the authority of a power of attorney.

(2) If the election is exercised on behalf of a surviving spouse who is an incapacitated person, the court shall set aside that portion of the elective-share and supplemental elective-share amounts due from the decedent's probate estate and recipients of the decedent's nonprobate transfers to others under ~~72-2-227(2)~~ and ~~(3)~~ [section 28(3) and (4)] and shall appoint a trustee to administer that property for the support of the surviving spouse. For the purposes of this subsection, an election on behalf of a surviving spouse by an agent under a durable power of attorney is presumed to be on behalf of a surviving spouse who is an incapacitated person. The trustee shall administer the trust in accordance with the following terms and such additional terms as the court determines appropriate:

(a) Expenditures of income and principal may be made in the manner, when, and to the extent that the trustee determines suitable and proper for the surviving spouse's support, without court order but with regard to

1 other support, income, and property of the surviving spouse exclusive of benefits of medical or other forms of
2 assistance from any state or federal government or governmental agency for which the surviving spouse qualifies
3 on the basis of need.

4 (b) During the surviving spouse's incapacity, neither the surviving spouse nor anyone acting on behalf
5 of the surviving spouse has a power to terminate the trust; but if the surviving spouse regains capacity, the
6 surviving spouse then acquires the power to terminate the trust and acquire full ownership of the trust property
7 free of trust by delivering to the trustee a writing signed by the surviving spouse declaring the termination.

8 (c) Upon the surviving spouse's death, the trustee shall transfer the unexpended trust property in the
9 following order:

10 (i) under the residuary clause, if any, of the will of the predeceased spouse against whom the elective
11 share was taken, as if that predeceased spouse died immediately after the surviving spouse; or

12 (ii) to that predeceased spouse's heirs under 72-2-721."
13

14 **Section 31.** Section 72-2-225, MCA, is amended to read:

15 **"72-2-225. Proceeding for elective share -- time limit.** (1) Except as provided in subsection (2), the
16 election must be made by filing in the court and mailing or delivering to the personal representative, if any, a
17 petition for the elective share within 9 months after the date of the decedent's death or within 6 months after the
18 probate of the decedent's will, whichever limitation later expires. The surviving spouse shall give notice of the time
19 and place set for hearing to persons interested in the estate and to the distributees and recipients of portions of
20 the augmented estate whose interests will be adversely affected by the taking of the elective share. Except as
21 provided in subsection (2), the decedent's nonprobate transfers to others described in ~~72-2-222(2)(b)~~ [section
22 24], is not included within the augmented estate for the purpose of computing the elective share if the petition is
23 filed more than 9 months after the decedent's death.

24 (2) Within 9 months after the decedent's death, the surviving spouse may petition the court for an
25 extension of time for making an election. If, within 9 months after the decedent's death, the spouse gives notice
26 of the petition to all persons interested in the decedent's nonprobate transfers to others the court for cause shown
27 by the surviving spouse may extend the time for election. If the court grants the spouse's petition for an extension,
28 the decedent's nonprobate transfers to others described in ~~72-2-222(2)(b)~~ [section 24], is not excluded from the
29 augmented estate for the purpose of computing the elective-share and supplemental elective-share amounts if
30 the spouse makes an election by filing in the court and mailing or delivering to the personal representative, if any,

1 a petition for the elective share within the time allowed by the extension.

2 (3) The surviving spouse may withdraw a demand for an elective share at any time before entry of a final
3 determination by the court.

4 (4) After notice and hearing, the court shall determine the elective-share and supplemental elective-share
5 amounts and shall order its payment from the assets of the augmented estate or by contribution as appears
6 appropriate under ~~72-2-227~~ [section 28]. If it appears that a fund or property included in the augmented estate
7 has not come into the possession of the personal representative or has been distributed by the personal
8 representative, the court nevertheless shall fix the liability of any person who has any interest in the fund or
9 property or who has possession thereof, whether as trustee or otherwise. The proceeding may be maintained
10 against fewer than all persons against whom relief could be sought, but no person is subject to contribution in
11 any greater amount than the person would have been under ~~72-2-227~~ [section 28] if relief had been secured
12 against all persons subject to contribution.

13 (5) The order or judgment of the court may be enforced as necessary in suit for contribution or payment
14 in other courts of this state or other jurisdictions."

15
16 **Section 32.** Section 72-2-228, MCA, is amended to read:

17 **"72-2-228. Protection of payors and other third parties.** (1) Although under ~~72-2-222~~ [section 24] a
18 payment, item of property, or other benefit is included in the decedent's nonprobate transfers to others, a payor
19 or other third party is not liable for having made a payment or transferred an item of property or other benefit to
20 a beneficiary designated in a governing instrument or for having taken any other action in good faith reliance on
21 the validity of a governing instrument, upon request and satisfactory proof of the decedent's death, before the
22 payor or other third party received written notice from the surviving spouse or spouse's representative of an
23 intention to file a petition for the elective share or that a petition for the elective share has been filed. A payor or
24 other third party is liable only for actions taken 2 or more business days after the payor or other third party
25 received written notice of an intention to file a petition for the elective share or that a petition for the elective share
26 has been filed. The written notice must indicate the name of the decedent, the date of the decedent's death, the
27 name of the person asserting an interest, the nature of the payment or item of property or other benefit, and a
28 statement that the spouse intends to file a petition for the elective share or that a petition for the elective share
29 has been filed. Any form of service of notice other than that described in subsection (2) is not sufficient to impose
30 liability on a payor or other third party for actions taken pursuant to the governing instrument.

(2) The written notice must be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Notice to a sales representative of the payor or other third party does not constitute notice to the payor or other third party. Upon receipt of written notice of intention to file a petition for the elective share or that a petition for the elective share has been filed, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The availability of an action under this section does not prevent the payor or other third party from taking any other action authorized by law or the governing instrument. If probate proceedings have not been commenced, the payor or other third party shall file with the court a copy of the written notice received by the payor or other third party, with the payment of funds or transfer or deposit of property. The court may not charge a filing fee to the payor or other third party for the payment, transfer, or deposit. The court shall hold the funds or item of property and, upon its determination under 72-2-225(4), shall order disbursement in accordance with the determination. If no petition is filed in the court within the specified time under 72-2-225(1) or, if filed, the demand for an elective share is withdrawn under 72-2-225(3), the court shall order disbursement to the designated beneficiary. A filing fee, if any, may, in the discretion of the court, be charged upon disbursement either to the recipient or against the funds or property on deposit with the court. Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims under the governing instrument or applicable law for the value of amounts paid to or items of property transferred to or deposited with the court.

(3) Upon petition to the probate court by the beneficiary designated in a governing instrument, the court may order that all or part of the property be paid to the beneficiary in an amount and subject to conditions consistent with this section."

Section 33. Section 72-2-230, MCA, is amended to read:

"72-2-230. Personal liability of recipients. (1) Only original recipients of the decedent's nonprobate transfers to others, and the donees of the recipients of the decedent's nonprobate transfers to others, to the extent the donees have the property or its proceeds, are liable to make a proportional contribution toward satisfaction of the surviving spouse's elective-share or supplemental elective-share amount. A person liable to make contribution may choose to give up the proportional part of the decedent's nonprobate transfers to the

1 person or to pay the value of the amount for which the person is liable.

2 (2) If any section or part of any section of this part is preempted by federal law with respect to a payment,
3 an item of property, or any other benefit included in the decedent's nonprobate transfers to others, a person who,
4 not for value, receives the payment, item of property, or other benefit is obligated to return that payment, item of
5 property, or benefit or is personally liable for the amount of that payment or the value of that item of property or
6 benefit, as provided in ~~72-2-227~~ [section 28], to the person who would have been entitled to it were that section
7 or part of that section not preempted."

8
9 **Section 34.** Section 72-2-412, MCA, is amended to read:

10 **"72-2-412. Homestead allowance.** A decedent's surviving spouse is entitled to a homestead allowance
11 of ~~\$20,000~~ \$22,500. If there is no surviving spouse, each minor child and each dependent child of the decedent
12 is entitled to a homestead allowance amounting to ~~\$20,000~~ \$22,500 divided by the number of minor and
13 dependent children of the decedent. The homestead allowance is exempt from and has priority over all claims
14 against the estate. Homestead allowance is in addition to any share passing to the surviving spouse or minor or
15 dependent child by the will of the decedent unless otherwise provided, by intestate succession, or by way of
16 elective share."

17
18 **Section 35.** Section 72-2-413, MCA, is amended to read:

19 **"72-2-413. Exempt property.** In addition to the homestead allowance, the decedent's surviving spouse
20 is entitled from the estate to a value, not exceeding ~~\$10,000~~ \$15,000 in excess of any security interests therein,
21 in household furniture, automobiles, furnishings, appliances, and personal effects. If there is no surviving spouse,
22 the decedent's children are entitled jointly to the same value. If encumbered chattels are selected and if the value
23 in excess of security interests, plus that of other exempt property, is less than ~~\$10,000~~ \$15,000 or if there is not
24 ~~\$10,000~~ \$15,000 worth of exempt property in the estate, the spouse or children are entitled to other assets of the
25 estate, if any, to the extent necessary to make up the ~~\$10,000~~ \$15,000 value. Rights to exempt property and
26 assets needed to make up a deficiency of exempt property have priority over all claims against the estate, but
27 the right to any assets to make up a deficiency of exempt property abates as necessary to permit earlier payment
28 of homestead allowance and family allowance. These rights are in addition to any benefit or share passing to the
29 surviving spouse or children by the decedent's will unless otherwise provided, by intestate succession, or by way
30 of elective share."

1
2 **Section 36.** Section 72-2-415, MCA, is amended to read:

3 **"72-2-415. Source, determination, and documentation.** (1) If the estate is otherwise sufficient,
4 property specifically devised may not be used to satisfy rights to homestead allowance or exempt property.
5 Subject to this restriction, the surviving spouse, guardians of minor children, or children who are adults may select
6 property of the estate as homestead allowance and exempt property. The personal representative may make
7 those selections if the surviving spouse, the children, or the guardians of the minor children are unable or fail to
8 do so within a reasonable time or if there is no guardian of a minor child. The personal representative may
9 execute an instrument or deed of distribution to establish the ownership of property taken as homestead
10 allowance or exempt property. The personal representative may determine the family allowance in a lump sum
11 not exceeding ~~\$18,000~~ \$27,000 or periodic installments not exceeding ~~\$1,500~~ \$2,250 per month for 1 year and
12 may disburse funds of the estate in payment of the family allowance and any part of the homestead allowance
13 payable in cash. The personal representative or any interested person aggrieved by any selection, determination,
14 payment, proposed payment, or failure to act under this section may petition the court for appropriate relief, which
15 may include a family allowance other than that which the personal representative determined or could have
16 determined.

17 (2) If the right to an elective share is exercised on behalf of a surviving spouse who is an incapacitated
18 person, the personal representative may add any unexpended portions payable under the homestead allowance,
19 exempt property, and family allowance to the trust established under 72-2-223(2)."

20
21 **Section 37.** Section 72-2-613, MCA, is amended to read:

22 **"72-2-613. Antilapse -- deceased devisee -- class gifts.** (1) As used in this section, the following
23 definitions apply:

24 (a) "Alternative devise" means a devise that is expressly created by the will and that under the terms of
25 the will may take effect instead of another devise on the happening of one or more events, including survival of
26 the testator or failure to survive the testator, whether an event is expressed in condition-precedent,
27 condition-subsequent, or any other form. A residuary clause constitutes an alternative devise with respect to a
28 nonresiduary devise only if the will specifically provides that, upon lapse or failure, the nonresiduary devise or
29 nonresiduary devises in general pass under the residuary clause.

30 (b) "Class member" includes an individual who fails to survive the testator but who would have taken

under a devise in the form of a class gift had the individual survived the testator.

(c) "Descendant of a grandparent", as used in subsection (2), means an individual who qualifies as a descendant of a grandparent of the testator or of the donor of a power of appointment under the:

(i) rules of construction applicable to a class gift created in the testator's will if the devise or exercise of the power is in the form of a class gift; or

(ii) rules for intestate succession if the devise or exercise of the power is not in the form of a class gift.

(d) "Descendants", as used in the phrase "surviving descendants" of a deceased devisee or class member in subsections (2)(a) and (2)(b), mean the descendants of a deceased devisee or class member who would take under a class gift created in the testator's will.

~~(e)~~(e) "Devise" includes an alternative devise, a devise in the form of a class gift, and an exercise of a power of appointment.

~~(d)~~(f) "Devisee" includes:

(i) a class member if the devise is in the form of a class gift;

(ii) an individual or class member who was deceased at the time the testator executed the testator's will as well as an individual or class member who was then living but who failed to survive the testator; and

(iii) an appointee under a power of appointment exercised by the testator's will.

~~(e)~~(g) "Stepchild" means a child of the surviving, deceased, or former spouse of the testator or of the donor of a power of appointment but not a child of the testator or donor.

~~(f)~~(h) "Surviving ~~devisee~~", or in the phrase "surviving ~~descendant~~ devisees" or "surviving ~~decendants~~" means ~~a devisee or a descendant~~ devisees or descendants who neither predeceased the testator nor ~~is considered~~ are deemed to have predeceased the testator under 72-2-712.

~~(g)~~(i) "Testator" includes the donee of a power of appointment if the power is exercised in the testator's will.

(2) If a devisee fails to survive the testator and is a grandparent, a descendant of a grandparent, or a stepchild of either the testator or the donor of a power of appointment exercised by the testator's will, the following apply:

(a) Except as provided in subsection (2)(d), if the devise is not in the form of a class gift and the deceased devisee leaves surviving descendants, a substitute gift is created in the devisee's surviving descendants. They take by representation the property to which the devisee would have been entitled had the devisee survived the testator.

(b) Except as provided in subsection (2)(d), if the devise is in the form of a class gift, other than a devise to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives", or "family" or a class described by language of similar import, a substitute gift is created in the surviving descendants of any deceased devisee. The property to which the devisees would have been entitled had all of them survived the testator passes to the surviving devisees and the surviving descendants of the deceased devisees. Each surviving devisee takes the share to which the devisee would have been entitled had the deceased devisees survived the testator. Each deceased devisee's surviving descendants who are substituted for the deceased devisee take by representation the share to which the deceased devisee would have been entitled had the deceased devisee survived the testator. For purposes of this ~~subsection (b)~~ section, "deceased devisee" means a class member who failed to survive the testator and left one or more surviving descendants.

(c) For purposes of 72-2-611, words of survivorship, such as in a devise to an individual "if the individual survives me" or in a devise to "my surviving children", are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this section.

(d) If the will creates an alternative devise with respect to a devise for which a substitute gift is created by subsection (2)(a) or (2)(b), the substitute gift is superseded by the alternative devise ~~only if an expressly designated devisee of the alternative devise is entitled to take under the will; if:~~

(i) the alternative devise is in the form of a class gift and one or more members of the class is entitled to take under the will; or

(ii) the alternative devise is not in the form of a class gift and the expressly designated devisee of the alternative devise is entitled to take under the will.

(e) Unless the language creating a power of appointment expressly excludes the substitution of the descendants of an appointee for the appointee, a surviving descendant of a deceased appointee of a power of appointment may be substituted for the appointee under this section, whether or not the descendant is an object of the power.

(3) If, under subsection (2), substitute gifts are created and not superseded with respect to more than one devise and the devises are alternative devises, one to the other, the determination of which of the substitute gifts takes effect is resolved as follows:

(a) Except as provided in subsection (3)(b), the devised property passes under the primary substitute gift.

(b) If there is a younger-generation devise, the devised property passes under the younger-generation

1 substitute gift and not under the primary substitute gift.

2 (c) As used in this subsection (3), the following definitions apply:

3 (i) "Primary devise" means the devise that would have taken effect had all the deceased devisees of the
4 alternative devises who left surviving descendants survived the testator.

5 (ii) "Primary substitute gift" means the substitute gift created with respect to the primary devise.

6 (iii) "Younger-generation devise" means a devise that:

7 (A) is to a descendant of a devisee of the primary devise;

8 (B) is an alternative devise with respect to the primary devise;

9 (C) is a devise for which a substitute gift is created; and

10 (D) would have taken effect had all the deceased devisees who left surviving descendants survived the
11 testator except the deceased devisee or devisees of the primary devise.

12 (iv) "Younger-generation substitute gift" means the substitute gift created with respect to the
13 younger-generation devise."
14

15 **Section 38.** Section 72-2-616, MCA, is amended to read:

16 **"72-2-616. Nonademption of specific devises -- unpaid proceeds of sale, condemnation, or**
17 **insurance -- sale by conservator or agent.** (1) A specific devisee has the right to the specifically devised
18 property in the testator's estate at death and:

19 (a) any balance of the purchase price, together with any security interest, owing from a purchaser to the
20 testator at death by reason of sale of the property;

21 (b) any amount of a condemnation award for the taking of the property unpaid at death;

22 (c) any proceeds unpaid at death on fire or casualty insurance on or other recovery for injury to the
23 property;

24 (d) property owned by the testator at death and acquired as a result of foreclosure or obtained in lieu of
25 foreclosure of the security interest for a specifically devised obligation;

26 (e) real or tangible personal property owned by the testator at death that the testator acquired as a
27 replacement for specifically devised real or tangible personal property; and

28 ~~(f) unless the facts and circumstances indicate that ademption of the devise was intended by the testator~~
29 ~~or ademption of the devise is consistent with the testator's manifested plan of distribution, the value of the~~
30 ~~specifically devised property to the extent the specifically devised property is not in the testator's estate at death~~

1 ~~and its value or its replacement is not covered by subsections (1)(a) through (1)(e).~~

2 (f) if not covered by subsections (1)(a) through (1)(e), a pecuniary devise equal to the value as of its date
3 of disposition of other specifically devised property disposed of during the testator's lifetime but only to the extent
4 it is established that ademption would be inconsistent with the testator's manifested plan of distribution or that
5 at the time the will was made, the date of disposition or otherwise, the testator did not intend ademption of the
6 devise.

7 (2) If specifically devised property is sold or mortgaged by a conservator or an agent acting within the
8 authority of a durable power of attorney for an incapacitated principal or if a condemnation award, insurance
9 proceeds, or recovery for an injury to property is paid to a conservator or an agent acting within the authority of
10 a durable power of attorney for an incapacitated principal, the specific devisee has the right to a general
11 pecuniary devise equal to the net sale price, the amount of the unpaid loan, the condemnation award, the
12 insurance proceeds, or the recovery.

13 (3) The right of the specific devisee under subsection (2) is reduced by any right the devisee has under
14 subsection (1).

15 (4) For the purposes of the references in subsection (2) to a conservator, subsection (2) does not apply
16 if, after the sale, mortgage, condemnation, casualty, or recovery, it was adjudicated that the testator's incapacity
17 ceased and the testator survived the adjudication by 1 year.

18 (5) For the purposes of the references in subsection (2) to an agent acting within the authority of a
19 durable power of attorney for an incapacitated principal:

20 (a) "incapacitated principal" means a principal who is an incapacitated person;

21 (b) no adjudication of incapacity before death is necessary; and

22 (c) the acts of an agent within the authority of a durable power of attorney are presumed to be for an
23 incapacitated principal."

24
25 **Section 39.** Section 72-2-712, MCA, is amended to read:

26 **"72-2-712. Requirement of survival by 120 hours.** (1) For the purposes of chapters 1 through 5, except
27 as provided in subsection (4), an individual who is not established by clear and convincing evidence to have
28 survived an event, including the death of another individual, by 120 hours is ~~considered~~ deemed to have
29 predeceased the event.

30 (2) Except as provided in subsection (4), for purposes of a provision of a governing instrument that

1 relates to an individual surviving an event, including the death of another individual, an individual who is not
2 established by clear and convincing evidence to have survived the event by 120 hours is ~~considered~~ deemed to
3 have predeceased the event.

4 (3) (a) Except as provided in subsection (4), if:

5 (i) it is not established by clear and convincing evidence that one of two co-owners with right of
6 survivorship survived the other co-owner by 120 hours, one-half of the property passes as if one had survived
7 by 120 hours and one-half as if the other had survived by 120 hours; and

8 (ii) there are more than two co-owners and it is not established by clear and convincing evidence that at
9 least one of them survived the others by 120 hours, the property passes in the proportion that one bears to the
10 whole number of co-owners.

11 (b) For the purposes of this subsection (3), "co-owners with right of survivorship" includes joint tenants,
12 tenants by the entireties, and other co-owners of property or accounts held under circumstances that entitle one
13 or more to the whole of the property or account on the death of the other or others.

14 (4) Survival by 120 hours is not required if:

15 (a) the governing instrument contains language dealing explicitly with simultaneous deaths or deaths
16 in a common disaster and that language is operable under the facts of the case;

17 (b) the governing instrument expressly indicates that an individual is not required to survive an event,
18 including the death of another individual, by any specified period or expressly requires the individual to survive
19 the event by a specified period. However, survival of the event or the specified period must be established by
20 clear and convincing evidence.

21 (c) the imposition of a 120-hour requirement of survival would cause a nonvested property interest or
22 a power of appointment to fail to qualify for validity under 72-2-1002(1)(a), (2)(a), or (3)(a) or to become invalid
23 under 72-2-1002(1)(b), (2)(b), or (3)(b); however, survival must be established by clear and convincing evidence;
24 or

25 (d) the application of a 120-hour requirement of survival to multiple governing instruments would result
26 in an unintended failure or duplication of a disposition. However, survival must be established by clear and
27 convincing evidence.

28 (5) (a) A payor or other third party is not liable for having made a payment or transferred an item of
29 property or any other benefit to a beneficiary designated in a governing instrument who, under this section, is not
30 entitled to the payment or item of property, or for having taken any other action in good faith reliance on the

1 beneficiary's apparent entitlement under the terms of the governing instrument, before the payor or other third
2 party received written notice of a claimed lack of entitlement under this section. A payor or other third party is
3 liable for a payment made or other action taken after the payor or other third party received written notice of a
4 claimed lack of entitlement under this section.

5 (b) Written notice of a claimed lack of entitlement under subsection (5)(a) must be mailed to the payor's
6 or other third party's main office or home by registered or certified mail, return receipt requested, or served upon
7 the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice
8 of a claimed lack of entitlement under this section, a payor or other third party may pay any amount owed or
9 transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings
10 relating to the decedent's estate or, if no proceedings have been commenced, to or with the court having
11 jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's
12 residence. The court shall hold the funds or item of property and, upon its determination under this section, shall
13 order disbursement in accordance with the determination. Payments, transfers, or deposits made to or with the
14 court discharge the payor or other third party from all claims for the value of amounts paid to or items of property
15 transferred to or deposited with the court.

16 (6) (a) A person who purchases property for value and without notice or who receives a payment or other
17 item of property in partial or full satisfaction of a legally enforceable obligation is neither obligated under this
18 section to return the payment, item of property, or benefit nor liable under this section for the amount of the
19 payment or the value of the item of property or benefit. However, a person who, not for value, receives a payment,
20 item of property, or other benefit to which the person is not entitled under this section is obligated to return the
21 payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item
22 of property or benefit, to the person who is entitled to it under this section.

23 (b) If this section or any part of this section is preempted by federal law with respect to a payment, an
24 item of property, or any other benefit covered by this section, a person who, not for value, receives the payment,
25 item of property, or other benefit to which the person is not entitled under this section is obligated to return the
26 payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item
27 of property or benefit, to the person who would have been entitled to it were this section or part of this section not
28 preempted."

29
30 NEW SECTION. **Section 40. Class gifts construed to accord with intestate succession --**

1 **exceptions.** (1) As used in this section:

2 (a) "Adoptee" has the meaning set forth in [section 13].

3 (b) "Child of assisted reproduction" has the meaning set forth in [section 18].

4 (c) "Distribution date" means the date when an immediate or postponed class gift takes effect in
5 possession or enjoyment.

6 (d) "Functioned as a parent of the adoptee" has the meaning set forth in [section 13], substituting
7 "adoptee" for "child" in that definition.

8 (e) "Functioned as a parent of the child" has the meaning set forth in [section 13].

9 (f) "Genetic parent" has the meaning set forth in [section 13].

10 (g) "Gestational child" has the meaning set forth in [section 19].

11 (h) "Relative" has the meaning set forth in [section 13].

12 (2) A class gift that uses a term of relationship to identify the class members includes a child of assisted
13 reproduction, a gestational child, and, except as otherwise provided in subsections (5) and (6), an adoptee and
14 a child born to parents who are not married to each other, and their respective descendants if appropriate to the
15 class, in accordance with the rules for intestate succession regarding parent-child relationships. For the purpose
16 of determining whether a contrary intention exists under 72-2-711, a provision in a governing instrument that
17 relates to the inclusion or exclusion in a class gift of a child born to parents who are not married to each other but
18 does not specifically refer to a child of assisted reproduction or a gestational child does not apply to a child of
19 assisted reproduction or a gestational child.

20 (3) Terms of relationship in a governing instrument that do not differentiate relationships by blood from
21 those by marriage, such as uncles, aunts, nieces, or nephews, are construed to exclude relatives by marriage,
22 unless:

23 (a) when the governing instrument was executed, the class was then and foreseeably would be empty;

24 or

25 (b) the language or circumstances otherwise establish that relatives by marriage were intended to be
26 included.

27 (4) Terms of relationship in a governing instrument that do not differentiate relationships by the half blood
28 from those by the whole blood, such as brothers, sisters, nieces, or nephews, are construed to include both types
29 of relationships.

30 (5) In construing a dispositive provision of a transferor who is not the genetic parent, a child of a genetic

parent is not considered the child of a genetic parent unless that genetic parent, a relative of the genetic parent, or the spouse or surviving spouse of the genetic parent or of a relative of the genetic parent functioned as a parent of the child before the child reached 18 years of age.

(6) In construing a dispositive provision of a transferor who is not the adoptive parent, an adoptee is not considered the child of the adoptive parent unless:

(a) the adoption took place before the adoptee reached 18 years of age;

(b) the adoptive parent was the adoptee's stepparent or foster parent; or

(c) the adoptive parent functioned as a parent of the adoptee before the adoptee reached 18 years of age.

(7) The following rules apply for purposes of the class-closing rules:

(a) A child in utero at a particular time is treated as living at that time if the child lives 120 hours after birth.

(b) If a child of assisted reproduction or a gestational child is conceived posthumously and the distribution date is the deceased parent's death, the child is treated as living on the distribution date if the child lives 120 hours after birth and was in utero not later than 36 months after the deceased parent's death or born not later than 45 months after the deceased parent's death.

(c) An individual who is in the process of being adopted when the class closes is treated as adopted when the class closes if the adoption is subsequently granted.

Section 41. Section 72-2-716, MCA, is amended to read:

"72-2-716. Life insurance -- retirement plan -- account with POD designation -- transfer-on-death registration -- deceased beneficiary. (1) As used in this section, the following definitions apply:

(a) "Alternative beneficiary designation" means a beneficiary designation that is expressly created by the governing instrument and that under the terms of the governing instrument may take effect instead of another beneficiary designation on the happening of one or more events, including survival of the decedent or failure to survive the decedent, whether an event is expressed in condition-precedent, condition-subsequent, or any other form.

(b) "Beneficiary" means the beneficiary of a beneficiary designation under which the beneficiary must survive the decedent and includes:

(i) a class member if the beneficiary designation is in the form of a class gift; and

(ii) an individual or class member who was deceased at the time the beneficiary designation was

1 executed as well as an individual or class member who was then living but who failed to survive the decedent,
2 but excludes a joint tenant of a joint tenancy with the right of survivorship and a party to a joint and survivorship
3 account.

4 (c) "Beneficiary designation" includes an alternative beneficiary designation and a beneficiary designation
5 in the form of a class gift.

6 (d) "Class member" includes an individual who fails to survive the decedent but who would have taken
7 under a beneficiary designation in the form of a class gift had the individual survived the decedent.

8 (e) "Descendant of a grandparent", as used in subsection (2), means an individual who qualifies as a
9 descendant of a grandparent of the decedent under the:

10 (i) rules of construction applicable to a class gift created in the decedent's beneficiary designation if the
11 beneficiary designation is in the form of a class gift; or

12 (ii) rules for intestate succession if the beneficiary designation is not in the form of a class gift.

13 (f) "Descendants", as used in the phrase "surviving descendants" of a deceased beneficiary or class
14 member in subsections (2)(a) and (2)(b), mean the descendants of a deceased beneficiary or class member who
15 would take under a class gift created in the beneficiary designation.

16 ~~(e)(g)~~ (g) "Stepchild" means a child of the decedent's surviving, deceased, or former spouse but not a child
17 of the decedent.

18 ~~(f)(h)~~ (h) "Surviving beneficiary" or "surviving descendant" means a beneficiary or a descendant "Surviving"
19 in the phrase or "surviving beneficiaries" or "surviving descendants", means beneficiaries or descendants who
20 neither predeceased the decedent nor ~~is considered~~ are deemed to have predeceased the decedent under
21 72-2-712.

22 (2) If a beneficiary fails to survive the decedent and is a grandparent, a descendant of a grandparent,
23 or a stepchild of the decedent, the following ~~provisions~~ apply:

24 (a) Except as provided in subsection (2)(d), if the beneficiary designation is not in the form of a class gift
25 and the deceased beneficiary leaves surviving descendants, a substitute gift is created in the beneficiary's
26 surviving descendants. They take by representation the property to which the beneficiary would have been
27 entitled had the beneficiary survived the decedent.

28 (b) Except as provided in subsection (2)(d), if the beneficiary designation is in the form of a class gift,
29 other than a beneficiary designation to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives",
30 or "family" or a class described by language of similar import, a substitute gift is created in the surviving

1 descendants of any deceased beneficiary. The property to which the beneficiaries would have been entitled had
2 all of them survived the decedent passes to the surviving beneficiaries and the surviving descendants of the
3 deceased beneficiaries. Each surviving beneficiary takes the share to which the surviving beneficiary would have
4 been entitled had the deceased beneficiaries survived the decedent. Each deceased beneficiary's surviving
5 descendants who are substituted for the deceased beneficiary take by representation the share to which the
6 deceased beneficiary would have been entitled had the deceased beneficiary survived the decedent. For
7 purposes of this subsection (b), "deceased beneficiary" means a class member who failed to survive the decedent
8 and left one or more surviving descendants.

9 (c) For the purposes of 72-2-711, words of survivorship, such as in a beneficiary designation to an
10 individual "if the individual survives me" or in a beneficiary designation to "my surviving children", are not, in the
11 absence of additional evidence, a sufficient indication of an intent contrary to the application of this section.

12 (d) If a governing instrument creates an alternative beneficiary designation with respect to a beneficiary
13 designation for which a substitute gift is created by subsection (2)(a) or (2)(b), the substitute gift is superseded
14 by the alternative beneficiary designation ~~only if an expressly designated beneficiary of the alternative beneficiary~~
15 ~~designation is entitled to take; if:~~

16 (i) the alternative beneficiary designation is in the form of a class gift and one or more members of the
17 class is entitled to take; or

18 (ii) the alternative beneficiary designation is not in the form of a class gift and the expressly designated
19 beneficiary of the alternative beneficiary designation is entitled to take.

20 (3) If, under subsection (2), substitute gifts are created and not superseded with respect to more than
21 one beneficiary designation and the beneficiary designations are alternative beneficiary designations, one to the
22 other, the determination of which of the substitute gifts takes effect is resolved as follows:

23 (a) Except as provided in subsection (3)(b), the property passes under the primary substitute gift.

24 (b) If there is a younger-generation beneficiary designation, the property passes under the
25 younger-generation substitute gift and not under the primary substitute gift.

26 (c) As used in this subsection (3), the following definitions apply:

27 (i) "Primary beneficiary designation" means the beneficiary designation that would have taken effect had
28 all the deceased beneficiaries of the alternative beneficiary designations who left surviving descendants survived
29 the decedent.

30 (ii) "Primary substitute gift" means the substitute gift created with respect to the primary beneficiary

1 designation.

2 (iii) "Younger-generation beneficiary designation" means a beneficiary designation that:

3 (A) is to a descendant of a beneficiary of the primary beneficiary designation;

4 (B) is an alternative beneficiary designation with respect to the primary beneficiary designation;

5 (C) is a beneficiary designation for which a substitute gift is created; and

6 (D) would have taken effect had all the deceased beneficiaries who left surviving descendants survived
7 the decedent except the deceased beneficiary or beneficiaries of the primary beneficiary designation.

8 (iv) "Younger-generation substitute gift" means the substitute gift created with respect to the
9 younger-generation beneficiary designation.

10 (4) (a) A payor is protected from liability in making payments under the terms of the beneficiary
11 designation until the payor has received written notice of a claim to a substitute gift under this section. Payment
12 made before the receipt of written notice of a claim to a substitute gift under this section discharges the payor,
13 but not the recipient, from all claims for the amounts paid. A payor is liable for a payment made after the payor
14 has received written notice of the claim. A recipient is liable for a payment received, whether or not written notice
15 of the claim is given.

16 (b) The written notice of the claim must be mailed to the payor's main office or home by certified mail,
17 return receipt requested, or served upon the payor in the same manner as a summons in a civil action. Upon
18 receipt of written notice of the claim, a payor may pay any amount owed by it to the court having jurisdiction of
19 the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to the
20 court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the
21 decedent's residence. The court shall hold the funds and, upon its determination under this section, shall order
22 disbursement in accordance with the determination. Payment made to the court discharges the payor from all
23 claims for the amounts paid.

24 (5) (a) A person who purchases property for value and without notice or who receives a payment or other
25 item of property in partial or full satisfaction of a legally enforceable obligation is neither obligated under this
26 section to return the payment, item of property, or benefit nor liable under this section for the amount of the
27 payment or the value of the item of property or benefit. However, a person who, not for value, receives a payment,
28 item of property, or other benefit to which the person is not entitled under this section is obligated to return the
29 payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item
30 of property or benefit, to the person who is entitled to it under this section.

(b) If this section or any part of this section is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this section, a person who, not for value, receives the payment, item of property, or other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted."

Section 42. Section 72-2-717, MCA, is amended to read:

"72-2-717. Survivorship with respect to future interests under terms of trust -- substitute takers.

(1) As used in this section, the following definitions apply:

(a) "Alternative future interest" means an expressly created future interest that may take effect in possession or enjoyment instead of another future interest on the happening of one or more events, including survival of an event or failure to survive an event, whether an event is expressed in condition-precedent, condition-subsequent, or any other form. A residuary clause in a will does not create an alternative future interest with respect to a future interest created in a nonresiduary devise in the will, whether or not the will specifically provides that lapsed or failed devises are to pass under the residuary clause.

(b) "Beneficiary" means the beneficiary of a future interest and includes a class member if the future interest is in the form of a class gift.

(c) "Class member" includes an individual who fails to survive the distribution date but who would have taken under a future interest in the form of a class gift had the individual survived the distribution date.

(d) "Descendants", in the phrase "surviving descendants" of a deceased beneficiary or class member in subsections (2)(a) and (2)(b), mean the descendants of a deceased beneficiary or class member who would take under a class gift created in the trust.

~~(d)~~(e) "Distribution date" with respect to a future interest means the time when the future interest is to take effect in possession or enjoyment. The distribution date need not occur at the beginning or end of a calendar day, but may occur at a time during the course of a day.

~~(e)~~(f) "Future interest" includes an alternative future interest and a future interest in the form of a class gift.

~~(f)~~(g) "Future interest under the terms of a trust" means a future interest that was created by a transfer creating a trust or to an existing trust or by an exercise of a power of appointment to an existing trust that directs

1 the continuance of an existing trust, designates a beneficiary of an existing trust, or creates a trust.

2 ~~(g)(h) "Surviving beneficiary" or "surviving descendant" means a beneficiary or a descendant~~ "Surviving"
3 in the phrase "surviving beneficiaries" or "surviving descendants" means beneficiaries or descendants who
4 neither predeceased the distribution date nor ~~is considered~~ are deemed to have predeceased the distribution date
5 under 72-2-712.

6 (2) A future interest under the terms of a trust is contingent on the beneficiary surviving the distribution
7 date. If a beneficiary of a future interest under the terms of a trust fails to survive the distribution date, the
8 following provisions apply:

9 (a) Except as provided in subsection (2)(d), if the future interest is not in the form of a class gift and the
10 deceased beneficiary leaves surviving descendants, a substitute gift is created in the beneficiary's surviving
11 descendants. They take by representation the property to which the beneficiary would have been entitled had
12 the beneficiary survived the distribution date.

13 (b) Except as provided in subsection (2)(d), if the future interest is in the form of a class gift, other than
14 a future interest to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives", or "family" or a
15 class described by language of similar import, a substitute gift is created in the surviving descendants of any
16 deceased beneficiary. The property to which the beneficiaries would have been entitled had all of them survived
17 the distribution date passes to the surviving beneficiaries and the surviving descendants of the deceased
18 beneficiaries. Each surviving beneficiary takes the share to which the surviving beneficiary would have been
19 entitled had the deceased beneficiaries survived the distribution date. Each deceased beneficiary's surviving
20 descendants who are substituted for the deceased beneficiary take by representation the share to which the
21 deceased beneficiary would have been entitled had the deceased beneficiary survived the distribution date. For
22 purposes of this subsection (2), "deceased beneficiary" means a class member who failed to survive the
23 distribution date and left one or more surviving descendants.

24 (c) For the purposes of 72-2-711, words of survivorship attached to a future interest are not, in the
25 absence of additional evidence, a sufficient indication of an intent contrary to the application of this section. Words
26 of survivorship include words of survivorship that relate to the distribution date or to an earlier or an unspecified
27 time, whether those words of survivorship are expressed in condition-precedent, condition-subsequent, or any
28 other form.

29 (d) If a governing instrument creates an alternative future interest with respect to a future interest for
30 which a substitute gift is created by subsection (2)(a) or (2)(b), the substitute gift is superseded by the alternative

1 future interest ~~only if an~~ if:

2 (i) the alternative future interest is in the form of a class gift and one or more members of the class is
3 entitled to take in possession or enjoyment; or

4 (ii) the alternative future interest is not in the form of a class gift and the expressly designated beneficiary
5 of the alternative future interest is entitled to take in possession or enjoyment.

6 (3) If, under subsection (2), substitute gifts are created and not superseded with respect to more than
7 one future interest and the future interests are alternative future interests, one to the other, the determination of
8 which of the substitute gifts takes effect is resolved as follows:

9 (a) Except as provided in subsection (3)(b), the property passes under the primary substitute gift.

10 (b) If there is a younger-generation future interest, the property passes under the younger-generation
11 substitute gift and not under the primary substitute gift.

12 (c) As used in this subsection (3), the following definitions apply:

13 (i) "Primary future interest" means the future interest that would have taken effect had all the deceased
14 beneficiaries of the alternative future interests who left surviving descendants survived the distribution date.

15 (ii) "Primary substitute gift" means the substitute gift created with respect to the primary future interest.

16 (iii) "Younger-generation future interest" means a future interest that:

17 (A) is to a descendant of a beneficiary of the primary future interest;

18 (B) is an alternative future interest with respect to the primary future interest;

19 (C) is a future interest for which a substitute gift is created; and

20 (D) would have taken effect had all the deceased beneficiaries who left surviving descendants survived
21 the distribution date except the deceased beneficiary or beneficiaries of the primary future interest.

22 (iv) "Younger-generation substitute gift" means the substitute gift created with respect to the
23 younger-generation future interest.

24 (4) Except as provided in subsection (5), if, after the application of subsections (2) and (3), there is no
25 surviving taker, the property passes in the following order:

26 (a) if the trust was created in a nonresiduary devise in the transferor's will or in a codicil to the transferor's
27 will, the property passes under the residuary clause in the transferor's will. For purposes of this section, the
28 residuary clause is treated as creating a future interest under the terms of a trust.

29 (b) if no taker is produced by the application of subsection (4)(a), the property passes to the transferor's
30 heirs under 72-2-721.

(5) If, after the application of subsections (2) and (3), there is no surviving taker and if the future interest was created by the exercise of a power of appointment:

(a) the property passes under the donor's gift-in-default clause, if any, which clause is treated as creating a future interest under the terms of a trust; and

(b) if no taker is produced by the application of subsection (5)(a), the property passes as provided in subsection (4). For purposes of subsection (4), "transferor" means the donor if the power was a nongeneral power and means the donee if the power was a general power."

Section 43. Section 72-2-813, MCA, is amended to read:

"72-2-813. Effect of homicide on intestate succession, wills, trusts, joint assets, life insurance, and beneficiary designations. (1) For purposes of this section, the following definitions apply:

(a) "Disposition or appointment of property" includes a transfer of an item of property or any other benefit to a beneficiary designated in a governing instrument.

(b) "Governing instrument" means a governing instrument executed by the decedent.

(c) "Revocable", with respect to a disposition, appointment, provision, or nomination, means one under which the decedent, at the time of or immediately before death, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of the killer, whether or not the decedent was then empowered to designate the decedent in place of the decedent's killer and whether or not the decedent then had capacity to exercise the power.

(2) An individual who feloniously and intentionally kills the decedent forfeits all benefits under this chapter with respect to the decedent's estate, including an intestate share, an elective share, an omitted spouse's or child's share, a homestead allowance, exempt property, and a family allowance. If the decedent died intestate, the decedent's intestate estate passes as if the killer disclaimed the killer's intestate share.

(3) The felonious and intentional killing of the decedent:

(a) revokes any revocable:

(i) disposition or appointment of property made by the decedent to the killer in a governing instrument;

(ii) provision in a governing instrument conferring a general or nongeneral power of appointment on the killer; and

(iii) nomination of the killer in a governing instrument, nominating or appointing the killer to serve in any fiduciary or representative capacity, including a personal representative, executor, trustee, or agent; and

1 (b) severs the interests of the decedent and killer in property held by them at the time of the killing as
2 joint tenants with the right of survivorship and transforms the interests of the decedent and killer into tenancies
3 in common.

4 (4) A severance under subsection (3)(b) does not affect any third-party interest in property acquired for
5 value and in good faith reliance on an apparent title by survivorship in the killer unless a writing declaring the
6 severance has been noted, registered, filed, or recorded in records appropriate to the kind and location of the
7 property, which records are relied upon, in the ordinary course of transactions involving such property, as
8 evidence of ownership.

9 (5) Provisions of a governing instrument are given effect as if the killer disclaimed all provisions revoked
10 by this section or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the killer
11 predeceased the decedent.

12 (6) A wrongful acquisition of property or interest by a killer not covered by this section must be treated
13 in accordance with the principle that a killer cannot profit from the killer's wrong.

14 (7) After all right to appeal has been exhausted, a judgment of conviction establishing criminal
15 accountability for the felonious and intentional killing of the decedent conclusively establishes the convicted
16 individual as the decedent's killer for purposes of this section. In the absence of a conviction, the court, upon the
17 petition of an interested person, shall determine whether, under the preponderance of evidence standard, the
18 individual would be found criminally accountable for the felonious and intentional killing of the decedent. If the
19 court determines that under that standard the individual would be found criminally accountable for the felonious
20 and intentional killing of the decedent, the determination conclusively establishes that individual as the decedent's
21 killer for purposes of this section.

22 (8) (a) A payor or other third party is not liable for having made a payment or transferred an item of
23 property or any other benefit to a beneficiary designated in a governing instrument affected by an intentional and
24 felonious killing, or for having taken any other action in good faith reliance on the validity of the governing
25 instrument, upon request and satisfactory proof of the decedent's death, before the payor or other third party
26 received written notice of a claimed forfeiture or revocation under this section. A payor or other third party does
27 not have a duty or obligation to make any determination as to whether the decedent was a victim of a homicide
28 or to seek any evidence with respect to a homicide even if the circumstances of the decedent's death are
29 suspicious or questionable as to the beneficiary's participation in a homicide. A payor or other third party is only
30 liable for actions taken 2 or more business days after the actual receipt by the payor or other third party of written

1 notice. The payor or other third party may be liable for actions taken pursuant to the governing instrument only
2 if the form of the service is that described in subsection (8)(b).

3 (b) The written notice must indicate the name of the decedent, the name of the person asserting an
4 interest, the nature of the payment or item of property or other benefit, and a statement that a claim of forfeiture
5 or revocation is being made under this section. Written notice of a claimed forfeiture or revocation under
6 subsection (8)(a) must be mailed to the payor's or other third party's main office or home by certified mail, return
7 receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil
8 action. Notice to a sales representative of the payor or other third party does not constitute notice to the payor
9 or other third party. Upon receipt of written notice of a claimed forfeiture or revocation under this section, a payor
10 or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the
11 court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have
12 been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates
13 located in the county of the decedent's residence. In addition to the actions available under this section, the payor
14 or other third party may take any action authorized by law or the governing instrument. If probate proceedings
15 have not been commenced, the payor or other third party shall file with the court a copy of the written notice
16 received by the payor or other third party, with the payment of funds or transfer or deposit of property. The court
17 may not charge a filing fee to the payor or other third party for the payment to the court of amounts owed or
18 transferred to or deposited with the court or any item of property. The court shall hold the funds or item of property
19 and, upon its determination under this section, shall order disbursement in accordance with the determination.
20 A filing fee, if any, may be charged upon disbursement either to the recipient or against the funds or property on
21 deposit with the court, in the discretion of the court. Payments, transfers, or deposits made to or with the court
22 discharge the payor or other third party from all claims for the value of amounts paid to or items of property
23 transferred to or deposited with the court.

24 (9) (a) A bona fide purchaser who purchases property or who receives a payment or other item of
25 property in partial or full satisfaction of a legally enforceable obligation is neither obligated under this section to
26 return the payment, item of property, or benefit nor liable under this section for the amount of the payment or the
27 value of the item of property or benefit. However, a person who, not for value, receives a payment, item of
28 property, or other benefit to which the person is not entitled under this section is obligated to return the payment,
29 item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of
30 property or benefit, to the person who is entitled to it under this section.

(b) If this section or any part of this section is preempted by federal law, ~~other than the federal Employee Retirement Income Security Act of 1974, as amended,~~ with respect to a payment, an item of property, or any other benefit covered by this section, a person who, not for value, receives the payment, item of property, or other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.

(10) For the purposes of this section, a felonious and intentional killing includes a deliberate homicide as defined in 45-5-102 and a mitigated deliberate homicide as defined in 45-5-103."

Section 44. Section 72-2-814, MCA, is amended to read:

"72-2-814. Revocation of probate and nonprobate transfers by divorce -- no revocation by other changes of circumstances. (1) As used in this section, the following definitions apply:

(a) "Disposition or appointment of property" includes a transfer of an item of property or any other benefit to a beneficiary designated in a governing instrument.

(b) "Divorce or annulment" means any divorce, annulment, or dissolution or declaration of invalidity of a marriage that would exclude the spouse as a surviving spouse within the meaning of 72-2-812. A decree of separation that does not terminate the status of husband and wife is not a divorce for purposes of this section.

(c) "Divorced individual" includes an individual whose marriage has been annulled.

(d) "Governing instrument" means a governing instrument executed by the divorced individual before the divorce or annulment of the individual's marriage to the individual's former spouse.

(e) "Relative of the divorced individual's former spouse" means an individual who is related to the divorced individual's former spouse by blood, adoption, or affinity and who, after the divorce or annulment, is not related to the divorced individual by blood, adoption, or affinity.

(f) "Revocable", with respect to a disposition, appointment, provision, or nomination, means one under which the divorced individual, at the time of the divorce or annulment, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of the individual's former spouse or former spouse's relative, whether or not the divorced individual was then empowered to designate the divorced individual in place of the individual's former spouse or in place of the former spouse's relative and whether or not the divorced individual then had the capacity to exercise the power.

(2) Except as to a retirement system established in Title 19 or as provided by the express terms of a

governing instrument, a court order, or a contract relating to the division of the marital estate made between the divorced individuals before or after the marriage, divorce, or annulment, the divorce or annulment of a marriage:

(a) revokes any revocable:

(i) disposition or appointment of property made by a divorced individual to the individual's former spouse in a governing instrument and any disposition or appointment created by law or in a governing instrument to a relative of the divorced individual's former spouse;

(ii) provision in a governing instrument conferring a general or nongeneral power of appointment on the divorced individual's former spouse or on a relative of the divorced individual's former spouse; and

(iii) nomination in a governing instrument that nominates a divorced individual's former spouse or a relative of the divorced individual's former spouse to serve in any fiduciary or representative capacity, including a personal representative, executor, trustee, conservator, agent, or guardian; and

(b) severs the interests of the former spouses in property held by them at the time of the divorce or annulment as joint tenants with the right of survivorship and transforms the interests of the former spouses into tenancies in common.

(3) A severance under subsection (2)(b) does not affect any third-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the survivor of the former spouses unless a writing declaring the severance has been noted, registered, filed, or recorded in records appropriate to the kind and location of the property, which records are relied upon, in the ordinary course of transactions involving such property, as evidence of ownership.

(4) Provisions of a governing instrument are given effect as if the former spouse and relatives of the former spouse disclaimed all provisions revoked by this section or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the former spouse and relatives of the former spouse died immediately before the divorce or annulment.

(5) Provisions revoked solely by this section are revived by the divorced individual's remarriage to the former spouse or by a nullification of the divorce or annulment.

(6) No change of circumstances other than as described in this section and in 72-2-813 effects a revocation.

(7) (a) A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument affected by a divorce, annulment, or remarriage, or for having taken any other action in good faith reliance on the validity of the

governing instrument, before the payor or other third party received written notice of the divorce, annulment, or remarriage. A payor or other third party does not have a duty or obligation to inquire as to the continued marital relationship between the decedent and a beneficiary or to seek any evidence with respect to a marital relationship. A payor or other third party is only liable for actions taken 2 or more business days after the actual receipt by the payor or other third party of written notice. The payor or other third party may be liable for actions taken pursuant to the governing instrument only if the form of service is that described in subsection (7)(b).

(b) The written notice must indicate the name of the decedent, the name of the person asserting an interest, the nature of the payment or item of property or other benefit, and a statement that a dissolution, annulment, or remarriage of the decedent and the designated beneficiary occurred. Written notice of the divorce, annulment, or remarriage under subsection (7)(a) must be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of the divorce, annulment, or remarriage, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. In addition to the actions available under this section, the payor or other third party may take any action authorized by law or the governing instrument. If probate proceedings have not been commenced, the payor or other third party shall file with the court a copy of the written notice received by the payor or other third party, with the payment of funds or transfer or deposit of property. The court may not charge a filing fee to the payor or other third party for the payment to the court of amounts owed or transferred to or deposited with the court or any item of property. The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement or transfer in accordance with the determination. A filing fee, if any, may, in the discretion of the court, be charged upon disbursement either to the recipient or against the funds or property on deposit with the court. Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

(8) (a) A bona fide purchaser who purchases property from a former spouse, relative of a former spouse, or any other person or who receives from a former spouse, relative of a former spouse, or any other person for value and without notice a payment or other item of property in partial or full satisfaction of a legally enforceable obligation is neither obligated under this section to return the payment, item of property, or benefit nor liable under

1 this section for the amount of the payment or the value of the item of property or benefit. However, a former
2 spouse, relative of a former spouse, or other person who, not for value, received a payment, item of property, or
3 other benefit to which that person is not entitled under this section is obligated to return the payment, item of
4 property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or
5 benefit, to the person who is entitled to it under this section.

6 (b) If this section or any part of this section is preempted by federal law, ~~other than the federal Employee~~
7 ~~Retirement Income Security Act of 1974, as amended~~, with respect to a payment, an item of property, or any
8 other benefit covered by this section, a former spouse, relative of the former spouse, or any other person who,
9 not for value, received a payment, item of property, or other benefit to which that person is not entitled under this
10 section is obligated to return that payment, item of property, or benefit, or is personally liable for the amount of
11 the payment or the value of the item of property or benefit, to the person who would have been entitled to it were
12 this section or part of this section not preempted.

13 (9) The provisions of this section apply to testate and intestate estates, and in the event of a conflict
14 between the provisions of this section and those provided in chapters 1 through 5 and chapter 16, part 6, of this
15 title, the provisions of this section control. This subsection does not apply if a divorced individual designates a
16 former spouse as personal representative of the estate subsequent to the divorce."
17

18 NEW SECTION. **Section 45. Reformation to correct mistakes.** The court may reform the terms of
19 a governing instrument, even if unambiguous, to conform the terms to the transferor's intention if it is proved by
20 clear and convincing evidence what the transferor's intention was and that the terms of the governing instrument
21 were affected by a mistake of fact or law, whether in expression or inducement.
22

23 NEW SECTION. **Section 46. Modification to achieve transferor's tax objectives.** To achieve the
24 transferor's tax objectives, the court may modify the terms of a governing instrument in a manner that is not
25 contrary to the transferor's probable intention. The court may provide that the modification has retroactive effect.
26

27 NEW SECTION. **Section 47. Short title.** [Sections 47 through 63] may be cited as the "Uniform
28 Disclaimer of Property Interests Act".
29

30 NEW SECTION. **Section 48. Definitions.** As used in [sections 47 through 63] the following definitions

1 apply:

2 (1) "Disclaimant" means the person to whom a disclaimed interest or power would have passed had the
3 disclaimer not been made.

4 (2) "Disclaimed interest" means the interest that would have passed to the disclaimant had the disclaimer
5 not been made.

6 (3) "Disclaimer" means the refusal to accept an interest in or power over property.

7 (4) "Fiduciary" means a personal representative, trustee, agent acting under a power of attorney, or other
8 person authorized to act as a fiduciary with respect to the property of another person.

9 (5) "Jointly held property" means property held in the name of two or more persons under an arrangement
10 in which all holders have concurrent interests and under which the last surviving holder is entitled to the whole
11 of the property.

12 (6) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability
13 company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public
14 corporation, or any other legal or commercial entity.

15 (7) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States
16 Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term
17 includes an Indian tribe or band, or Alaskan native village, recognized by federal law or formally acknowledged
18 by a state.

19 (8) "Trust" means:

20 (a) an express trust, charitable or noncharitable, with additions thereto, whenever and however created;
21 and

22 (b) a trust created pursuant to a statute, judgment, or decree which requires the trust to be administered
23 in the manner of an express trust.

24

25 NEW SECTION. **Section 49. Scope.** [Sections 47 through 63] applies to disclaimers of any interest in
26 or power over property, whenever created.

27

28 NEW SECTION. **Section 50. [Sections 47 through 63] supplemented by other law.** (1) Unless
29 displaced by a provision of [sections 47 through 63], the principles of law and equity supplement [sections 47
30 through 63].

(2) [Sections 47 through 63] do not limit any right of a person to waive, release, disclaim, or renounce an interest in or power over property under a law other than [sections 47 through 63].

NEW SECTION. Section 51. Power to disclaim -- general requirements -- when revocable. (1) A person may disclaim, in whole or part, any interest in or power over property, including a power of appointment. A person may disclaim the interest or power even if its creator imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to disclaim.

(2) Except to the extent a fiduciary's right to disclaim is expressly restricted or limited by another statute of this state or by the instrument creating the fiduciary relationship, a fiduciary may disclaim, in whole or part, any interest in or power over property, including a power of appointment, whether acting in a personal or representative capacity. A fiduciary may disclaim the interest or power even if its creator imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to disclaim or an instrument other than the instrument that created the fiduciary relationship imposed a restriction or limitation on the right to disclaim.

(3) To be effective, a disclaimer must be in a writing or other record, declare the disclaimer, describe the interest or power disclaimed, be signed by the person making the disclaimer, and be delivered or filed in the manner provided in [section 58]. In this subsection:

(a) "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form; and

(b) "signed" means, with present intent to authenticate or adopt a record, to:

(i) execute or adopt a tangible symbol; or

(ii) attach to or logically associate with the record an electronic sound, symbol, or process.

(4) A partial disclaimer may be expressed as a fraction, percentage, monetary amount, term of years, limitation of a power, or any other interest or estate in the property.

(5) A disclaimer becomes irrevocable when it is delivered or filed pursuant to [section 58] or when it becomes effective as provided in [sections 52 through 57], whichever occurs later.

(6) A disclaimer made under [sections 47 through 63] is not a transfer, assignment, or release.

NEW SECTION. Section 52. Disclaimer of interest in property. (1) In this section:

(a) "Future interest" means an interest that takes effect in possession or enjoyment, if at all, later than

1 the time of its creation.

2 (b) "Time of distribution" means the time when a disclaimed interest would have taken effect in
3 possession or enjoyment.

4 (2) Except for a disclaimer governed by [section 53 or 54], the following rules apply to a disclaimer of an
5 interest in property:

6 (a) The disclaimer takes effect as of the time the instrument creating the interest becomes irrevocable,
7 or, if the interest arose under the law of intestate succession, as of the time of the intestate's death.

8 (b) The disclaimed interest passes according to any provision in the instrument creating the interest
9 providing for the disposition of the interest, should it be disclaimed, or of disclaimed interests in general.

10 (c) If the instrument does not contain a provision described in subsection (2)(b), the following rules apply:

11 (i) If the disclaimant is not an individual, the disclaimed interest passes as if the disclaimant did not exist.

12 (ii) If the disclaimant is an individual, except as otherwise provided in subsections (2)(c)(iii) and (2)(c)(iv),
13 the disclaimed interest passes as if the disclaimant had died immediately before the time of distribution.

14 (iii) If by law or under the instrument, the descendants of the disclaimant would share in the disclaimed
15 interest by any method of representation had the disclaimant died before the time of distribution, the disclaimed
16 interest passes only to the descendants of the disclaimant who survive the time of distribution.

17 (iv) If the disclaimed interest would pass to the disclaimant's estate had the disclaimant died before the
18 time of distribution, the disclaimed interest instead passes by representation to the descendants of the disclaimant
19 who survive the time of distribution. If no descendant of the disclaimant survives the time of distribution, the
20 disclaimed interest passes to those persons, including the state but excluding the disclaimant, and in such shares
21 as would succeed to the transferor's intestate estate under the intestate succession law of the transferor's
22 domicile had the transferor died at the time of distribution. However, if the transferor's surviving spouse is living
23 but is remarried at the time of distribution, the transferor is deemed to have died unmarried at the time of
24 distribution.

25 (d) Upon the disclaimer of a preceding interest, a future interest held by a person other than the
26 disclaimant takes effect as if the disclaimant had died or ceased to exist immediately before the time of
27 distribution, but a future interest held by the disclaimant is not accelerated in possession or enjoyment.

28
29 **NEW SECTION. Section 53. Disclaimer of rights of survivorship in jointly held property.** (1) Upon
30 the death of a holder of jointly held property, a surviving holder may disclaim, in whole or part, the greater of:

1 (a) a fractional share of the property determined by dividing the number one by the number of joint
2 holders alive immediately before the death of the holder to whose death the disclaimer relates; or

3 (b) all of the property except that part of the value of the entire interest attributable to the contribution
4 furnished by the disclaimant.

5 (2) A disclaimer under subsection (1) takes effect as of the death of the holder of jointly held property to
6 whose death the disclaimer relates.

7 (3) An interest in jointly held property disclaimed by a surviving holder of the property passes as if the
8 disclaimant predeceased the holder to whose death the disclaimer relates.

9
10 **NEW SECTION. Section 54. Disclaimer of interest by trustee.** If a trustee disclaims an interest in
11 property that otherwise would have become trust property, the interest does not become trust property.

12
13 **NEW SECTION. Section 55. Disclaimer of power of appointment or other power not held in**
14 **fiduciary capacity.** If a holder disclaims a power of appointment or other power not held in a fiduciary capacity,
15 the following rules apply:

16 (1) If the holder has not exercised the power, the disclaimer takes effect as of the time the instrument
17 creating the power becomes irrevocable.

18 (2) If the holder has exercised the power and the disclaimer is of a power other than a presently
19 exercisable general power of appointment, the disclaimer takes effect immediately after the last exercise of the
20 power.

21 (3) The instrument creating the power is construed as if the power expired when the disclaimer became
22 effective.

23
24 **NEW SECTION. Section 56. Disclaimer by appointee, object, or taker in default of exercise of**
25 **power of appointment.** (1) A disclaimer of an interest in property by an appointee of a power of appointment
26 takes effect as of the time the instrument by which the holder exercises the power becomes irrevocable.

27 (2) A disclaimer of an interest in property by an object or taker in default of an exercise of a power of
28 appointment takes effect as of the time the instrument creating the power becomes irrevocable.

29
30 **NEW SECTION. Section 57. Disclaimer of power held in fiduciary capacity.** (1) If a fiduciary disclaims

1 a power held in a fiduciary capacity which has not been exercised, the disclaimer takes effect as of the time the
2 instrument creating the power becomes irrevocable.

3 (2) If a fiduciary disclaims a power held in a fiduciary capacity which has been exercised, the disclaimer
4 takes effect immediately after the last exercise of the power.

5 (3) A disclaimer under this section is effective as to another fiduciary if the disclaimer so provides and
6 the fiduciary disclaiming has the authority to bind the estate, trust, or other person for whom the fiduciary is acting.

7
8 **NEW SECTION. Section 58. Delivery or filing.** (1) In this section, "beneficiary designation" means an
9 instrument, other than an instrument creating a trust, naming the beneficiary of:

10 (a) an annuity or insurance policy;

11 (b) an account with a designation for payment on death;

12 (c) a security registered in beneficiary form;

13 (d) a pension, profit-sharing, retirement, or other employment-related benefit plan; or

14 (e) any other nonprobate transfer at death.

15 (2) Subject to subsections (3) through (12), delivery of a disclaimer may be effected by personal delivery,
16 first-class mail, or any other method likely to result in its receipt.

17 (3) In the case of an interest created under the law of intestate succession or an interest created by will,
18 other than an interest in a testamentary trust:

19 (a) a disclaimer must be delivered to the personal representative of the decedent's estate; or

20 (b) if no personal representative is then serving, it must be filed with a court having jurisdiction to appoint
21 the personal representative.

22 (4) In the case of an interest in a testamentary trust:

23 (a) a disclaimer must be delivered to the trustee then serving, or if no trustee is then serving, to the
24 personal representative of the decedent's estate; or

25 (b) if no personal representative is then serving, it must be filed with a court having jurisdiction to enforce
26 the trust.

27 (5) In the case of an interest in an inter vivos trust:

28 (a) a disclaimer must be delivered to the trustee then serving;

29 (b) if no trustee is then serving, it must be filed with a court having jurisdiction to enforce the trust; or

30 (c) if the disclaimer is made before the time the instrument creating the trust becomes irrevocable, it must

1 be delivered to the settlor of a revocable trust or the transferor of the interest.

2 (6) In the case of an interest created by a beneficiary designation which is disclaimed before the
3 designation becomes irrevocable, the disclaimer must be delivered to the person making the beneficiary
4 designation.

5 (7) In the case of an interest created by a beneficiary designation which is disclaimed after the
6 designation becomes irrevocable:

7 (a) the disclaimer of an interest in personal property must be delivered to the person obligated to
8 distribute the interest; and

9 (b) the disclaimer of an interest in real property must be recorded in the office of the county recorder of
10 the county where the real property that is the subject of the disclaimer is located.

11 (8) In the case of a disclaimer by a surviving holder of jointly held property, the disclaimer must be
12 delivered to the person to whom the disclaimed interest passes.

13 (9) In the case of a disclaimer by an object or taker in default of exercise of a power of appointment at
14 any time after the power was created:

15 (a) the disclaimer must be delivered to the holder of the power or to the fiduciary acting under the
16 instrument that created the power; or

17 (b) if no fiduciary is then serving, it must be filed with a court having authority to appoint the fiduciary.

18 (10) In the case of a disclaimer by an appointee of a nonfiduciary power of appointment:

19 (a) the disclaimer must be delivered to the holder, the personal representative of the holder's estate or
20 to the fiduciary under the instrument that created the power; or

21 (b) if no fiduciary is then serving, it must be filed with a court having authority to appoint the fiduciary.

22 (11) In the case of a disclaimer by a fiduciary of a power over a trust or estate, the disclaimer must be
23 delivered as provided in subsection (3), (4), or (5), as if the power disclaimed were an interest in property.

24 (12) In the case of a disclaimer of a power by an agent, the disclaimer must be delivered to the principal
25 or the principal's representative.

26
27 **NEW SECTION. Section 59. When disclaimer barred or limited.** (1) A disclaimer is barred by a
28 written waiver of the right to disclaim.

29 (2) A disclaimer of an interest in property is barred if any of the following events occur before the
30 disclaimer becomes effective:

1 (a) the disclaimant accepts the interest sought to be disclaimed;

2 (b) the disclaimant voluntarily assigns, conveys, encumbers, pledges, or transfers the interest sought to
3 be disclaimed or contracts to do so; or

4 (c) a judicial sale of the interest sought to be disclaimed occurs.

5 (3) A disclaimer, in whole or part, of the future exercise of a power held in a fiduciary capacity is not
6 barred by its previous exercise.

7 (4) A disclaimer, in whole or part, of the future exercise of a power not held in a fiduciary capacity is not
8 barred by its previous exercise unless the power is exercisable in favor of the disclaimant.

9 (5) A disclaimer is barred or limited if so provided by law other than [sections 47 through 63].

10 (6) A disclaimer of a power over property which is barred by this section is ineffective. A disclaimer of
11 an interest in property which is barred by this section takes effect as a transfer of the interest disclaimed to the
12 persons who would have taken the interest under [sections 47 through 63] had the disclaimer not been barred.

13
14 **NEW SECTION. Section 60. Tax qualified disclaimer.** Notwithstanding any other provision of [sections
15 47 through 63], if as a result of a disclaimer or transfer the disclaimed or transferred interest is treated pursuant
16 to the provisions of Title 26 of the United States Code, as now or hereafter amended, or any successor statute
17 thereto, and the regulations promulgated thereunder, as never having been transferred to the disclaimant, then
18 the disclaimer or transfer is effective as a disclaimer under [sections 47 through 63].

19
20 **NEW SECTION. Section 61. Recording of disclaimer.** If an instrument transferring an interest in or
21 power over property subject to a disclaimer is required or permitted by law to be filed, recorded, or registered,
22 the disclaimer may be so filed, recorded, or registered. Except as otherwise provided in [section 58(7)(b)], failure
23 to file, record, or register the disclaimer does not affect its validity as between the disclaimant and persons to
24 whom the property interest or power passes by reason of the disclaimer.

25
26 **NEW SECTION. Section 62. Application to existing relationships.** Except as otherwise provided in
27 [section 59], an interest in or power over property existing on [the effective date of this act] as to which the time
28 for delivering or filing a disclaimer under law superseded by [sections 47 through 63] has not expired may be
29 disclaimed after [the effective date of this act].

1 **NEW SECTION. Section 63. Relation to electronic signatures in global and national commerce**

2 **act.** [Sections 47 through 63] modifies, limits, and supersedes the federal Electronic Signatures in Global and
3 National Commerce Act (15 U.S.C. 7001, et seq.) but does not modify, limit, or supersede section 101(c) of that
4 act (15 U.S.C. 7001(c)) or authorize electronic delivery of any of the notices described in section 103(b) of that
5 act (15 U.S.C. 7003(b)).

6
7 **Section 64.** Section 72-3-102, MCA, is amended to read:

8 **"72-3-102. Necessity of order of probate of will.** Except as provided in 72-3-1101, to be effective to
9 prove the transfer of any property or to nominate an executor, a will must be declared to be valid by an order of
10 informal probate by the clerk or an adjudication of probate by the court."

11
12 **NEW SECTION. Section 65. Proceedings affecting devolution and administration -- jurisdiction**
13 **of subject matter.** The court may hear and determine formal proceedings involving administration and
14 distribution of decedents' estates after notice to interested persons in conformity with 72-1-301. Persons notified
15 are bound though less than all interested persons may have been given notice.

16
17 **Section 66.** Section 72-3-112, MCA, is amended to read:

18 **"72-3-112. Venue for estate proceedings.** (1) Venue for the first informal or formal testacy or
19 appointment proceedings after a decedent's death is:

20 (a) in the county where the decedent had the decedent's domicile at the time of death; or

21 (b) if the decedent was not domiciled in this state, in any county where property of the decedent was
22 located at the time of death.

23 (2) Venue for all subsequent proceedings within the exclusive jurisdiction of the court is in the place
24 where the initial proceeding occurred unless the initial proceeding has been transferred as provided in 72-1-203
25 or subsection (3) of this section.

26 (3) If the first proceeding was informal, on application of an interested person and after notice to the
27 proponent in the first proceeding, the court, upon finding that venue is elsewhere, may transfer the proceeding
28 and the file to the other court.

29 (4) For the purpose of aiding determinations concerning location of assets which may be relevant in
30 cases involving non-domiciliaries, a debt, other than one evidenced by investment or commercial paper or other

instrument in favor of a non-domiciliary is located where the debtor resides or, if the debtor is a person other than an individual, at the place where it has its principal office. Commercial paper, investment paper, and other instruments are located where the instrument is. An interest in property held in trust is located where the trustee may be sued."

Section 67. Section 72-3-122, MCA, is amended to read:

"72-3-122. Time limit on probate, testacy, and appointment proceedings -- exceptions. (1) No informal probate or appointment proceeding or formal testacy or appointment proceeding, other than a proceeding to probate a will previously probated at the testator's domicile and appointment proceedings relating to an estate in which there has been a prior appointment, may be commenced more than 3 years after the decedent's death, except:

(a) if a previous proceeding was dismissed because of doubt about the fact of the decedent's death, appropriate probate, appointment, or testacy proceedings may be maintained at any time thereafter upon a finding that the decedent's death occurred prior to the initiation of the previous proceeding and the applicant or petitioner has not delayed unduly in initiating the subsequent proceeding;

(b) appropriate probate, appointment, or testacy proceedings may be maintained in relation to the estate of an absent, disappeared, or missing person for whose estate a conservator has been appointed at any time within 3 years after the conservator becomes able to establish the death of the protected person;

(c) a proceeding to contest an informally probated will and to secure appointment of the person with legal priority for appointment in the event the contest is successful may be commenced within the later of 12 months from the informal probate or 3 years from the decedent's death;

(d) an informal appointment or a formal testacy or appointment proceeding may be commenced ~~after the time period thereafter,~~ if no proceedings concerning the succession or estate administration have occurred within the 3-year period after the decedent's death, but the personal representative has no right to possess estate assets provided in 72-3-606 beyond that necessary to confirm title to the property in the successors to the estate, and claims other than expenses of administration may not be presented against the estate; and

(e) a formal testacy proceeding may be commenced at any time after 3 years from the decedent's death for the purpose of establishing an instrument to direct or control the ownership of property passing or distributable after the decedent's death from one other than the decedent when the property is to be appointed by the terms of the decedent's will or is to pass or be distributed as a part of the decedent's estate or its transfer is otherwise

1 to be controlled by the terms of the decedent's will.

2 (2) These limitations do not apply to proceedings to construe probated wills or determine heirs of an
3 intestate.

4 (3) In cases under subsection (1)(a) or (1)(b), the date on which a testacy or appointment proceeding
5 is properly commenced shall be deemed to be the date of the decedent's death for purposes of other limitations
6 provisions of this code which relate to the date of death."

7
8 **Section 68.** Section 72-3-131, MCA, is amended to read:

9 **"72-3-131. ~~Compromise of controversies~~ Effect of approval of agreements involving trusts,**
10 **inalienable interests, or interests of third persons.** (1) A compromise of any controversy as to admission to
11 probate of any instrument offered for formal probate as the will of a decedent, the construction, validity, or effect
12 of any governing instrument, the rights or interests in the estate of the decedent, of any successor, or the
13 administration of the estate, if approved in a formal proceeding in the court for that purpose, is binding on all the
14 parties to the proceeding, including those unborn, unascertained, or who could not be located.

15 (2) An approved compromise is binding even though it may affect a trust or an inalienable interest. A
16 compromise does not impair the rights of creditors or of taxing authorities who are not parties to it."

17
18 **Section 69.** Section 72-3-201, MCA, is amended to read:

19 **"72-3-201. Applications to be verified.** Applications for informal probate or informal appointment must
20 be directed to the clerk and verified by the applicant to be accurate and complete to the best of the applicant's
21 knowledge and belief as to the information required by 72-3-202 through 72-3-205. By verifying an application
22 for informal probate or informal appointment, the applicant submits personally to the jurisdiction of the court in
23 any proceeding for relief from fraud relating to the application, or for perjury, that may be instituted against the
24 applicant."

25
26 **Section 70.** Section 72-3-202, MCA, is amended to read:

27 **"72-3-202. Required contents of application.** Every application for informal probate of a will or for
28 informal appointment of a personal representative, other than a special, ancillary, or successor representative,
29 must contain the following:

30 (1) a statement of the interest of the applicant;

(2) the name and date of death of the decedent, the decedent's age, and the county and state of the decedent's domicile at the time of death and the names and addresses of the spouse, children, heirs, and devisees and the ages of any who are minors so far as known or ascertainable with reasonable diligence by the applicant;

(3) if the decedent was not domiciled in the state at the time of death, a statement showing venue;

(4) a statement identifying and indicating the address of any personal representative of the decedent appointed in this state or elsewhere whose appointment has not been terminated;

(5) a statement indicating whether the applicant has received a demand for notice or is aware of any demand for notice of any probate or appointment proceeding concerning the decedent that may have been filed in this state or elsewhere; and

(6) that the time limit for informal probate or appointment as provided in this chapter has not expired either because 3 years or less have passed since the decedent's death, or, if more than 3 years from death have passed, circumstances as described by 72-3-122 have occurred authorizing tardy probate or appointment."

Section 71. Section 72-3-203, MCA, is amended to read:

"72-3-203. Probate and appointment under will -- additional information required. (1) An application for informal probate of a will must state the following in addition to the statements required by 72-3-202:

(a) that the original of the decedent's last will is in the possession of the court or accompanies the application, that an authenticated copy of a will probated in another jurisdiction accompanies the application, or that an authenticated copy of a will filed without probate in another jurisdiction and proved, as provided in 72-3-220, accompanies the application;

(b) that the applicant to the best of the applicant's knowledge believes the will to have been validly executed;

(c) that after the exercise of reasonable diligence, the applicant is unaware of any instrument revoking the will and that the applicant believes that the instrument that is the subject of the application is the decedent's last will;

~~—— (d) that the time limit for informal probate, as provided in this chapter, has not expired either because 3 years or less have passed since the decedent's death or, if more than 3 years from death have passed, that circumstances as described by 72-3-122 authorizing tardy probate have occurred.~~

(2) An application for informal appointment of a personal representative to administer an estate under

1 a will must describe the will by date of execution and state the time and place of probate or the pending
2 application or petition for probate. The application for appointment must adopt the statements in the application
3 or petition for probate and state the name, address, and priority for appointment of the person whose appointment
4 is sought."

5
6 **NEW SECTION. Section 72. Formal testacy proceedings -- contested cases.** In a contested case
7 in which the proper execution of a will is at issue, the following rules apply:

8 (1) If the will is self-proved pursuant to 72-2-524, the will satisfies the requirements for execution without
9 the testimony of any attesting witness, upon filing the will and the acknowledgment and affidavits annexed or
10 attached to it, unless there is evidence of fraud or forgery affecting the acknowledgment or affidavit.

11 (2) If the will is witnessed pursuant to 72-2-522(1), but not self-proved, the testimony of at least one of
12 the attesting witnesses is required to establish proper execution if the witness is within this state, competent, and
13 able to testify. Proper execution may be established by other evidence, including an affidavit of an attesting
14 witness. An attestation clause that is signed by the attesting witnesses raises a rebuttable presumption that the
15 events recited in the clause occurred.

16
17 **Section 73.** Section 72-3-401, MCA, is amended to read:

18 **"72-3-401. Supervised administration -- nature and purpose -- presumptive entitlement. (+)**

19 Supervised administration is a single in rem proceeding to secure complete administration and settlement of a
20 decedent's estate under the continuing authority of the court, which extends until entry of an order approving
21 distribution of the estate and discharging the personal representative ~~or other order terminating the proceeding.~~
22 or other order terminating the proceeding. A supervised personal representative is responsible to the court, as
23 well as to the interested parties, and is subject to directions concerning the estate made by the court on its own
24 motion or on the motion of any interested party. Except as otherwise provided in this part, or as otherwise
25 ordered by the court, a supervised personal representative has the same duties and powers as a personal
26 representative who is not supervised.

27 ~~(2) If a probate estate has not been closed within 3 years after the first appointment of a personal~~
28 ~~representative or administrator, any devisee under a will, beneficiary of a trust, or intestate heir of the decedent~~
29 ~~is entitled to petition for supervised administration under this section and is presumptively entitled to receive an~~
30 ~~order for supervised administration. The burden of proof to show cause why supervised administration should~~

not be granted is on the personal representative or administrator."

Section 74. Section 72-3-404, MCA, is amended to read:

"72-3-404. Powers and duties of personal representative in supervised administration. ~~(1) A supervised personal representative is responsible to the court, as well as to the interested parties, and is subject to directions concerning the estate made by the court on its own motion or on the motion of any interested party.~~

~~———(2) Except as otherwise provided in this part or as otherwise ordered by the court, a supervised personal representative has the same duties and powers as a personal representative who is not supervised.~~

~~———(3) Unless restricted by the court, a supervised personal representative has, without interim orders approving exercise of a power, all powers of personal representatives under this code, but the personal representative may not exercise the power to make any distribution of the estate without prior order of the court. Any other restriction on the power of a personal representative that may be ordered by the court must be endorsed on the personal representative's letters of appointment and unless so endorsed is ineffective as to persons dealing in good faith with the personal representative."~~

Section 75. Section 72-3-502, MCA, is amended to read:

"72-3-502. Priorities for appointment. Whether the proceedings are formal or informal, persons who are not disqualified have priority for appointment in the following order:

(1) the person with priority as determined by a probated will, including a person nominated by a power conferred in a will;

(2) the surviving spouse of the decedent who is a devisee of the decedent;

(3) the custodial parent of a minor decedent;

(4) other devisees of the decedent;

(5) the surviving spouse of the decedent;

(6) the parent of an adult decedent who was survived by issue, none of whom is an adult;

~~(6)(7)~~ other heirs of the decedent;

~~(7)(8)~~ public administrator;

~~(8)(9)~~ 45 days after the death of the decedent, any creditor."

Section 76. Section 72-3-504, MCA, is amended to read:

1 **"72-3-504. Renunciation -- nomination of other -- two or more persons sharing priority.** (1) A
2 person entitled to letters under 72-3-502(2) through ~~(6)~~ (7) may nominate a qualified person to act as personal
3 representative.

4 (2) Any person entitled to letters may renounce the person's right to nominate or to an appointment by
5 appropriate writing filed with the court.

6 (3) When two or more persons share a priority, those of them who do not renounce shall concur in
7 nominating another to act for them or in applying for appointment. If they are unable to concur in nominating
8 another to act for them or in applying for appointment, the court may appoint any qualified person."

9
10 **Section 77.** Section 72-3-514, MCA, is amended to read:

11 **"72-3-514. Demand for bond by interested person.** (1) Any person apparently having an interest in
12 the estate worth in excess of ~~\$1,000~~ \$5,000 or any creditor having a claim in excess of ~~\$1,000~~ \$5,000 may make
13 a written demand that a personal representative give bond. The demand must be filed with the clerk and a copy
14 mailed to the personal representative, if appointment and qualification have occurred. Upon filing of the demand,
15 bond is required, but the requirement ceases if the person demanding bond ceases to be interested in the estate
16 or if bond is excused as provided in 72-3-513 or 72-3-515.

17 (2) After the personal representative has received notice and until the filing of the bond or cessation of
18 the requirement of bond, the personal representative shall refrain from exercising any powers of the personal
19 representative's office except as necessary to preserve the estate.

20 (3) Failure of the personal representative to meet a requirement of bond by giving suitable bond within
21 30 days after receipt of notice is cause for removal and appointment of a successor personal representative."

22
23 **Section 78.** Section 72-3-607, MCA, is amended to read:

24 **"72-3-607. Inventory -- appraisal.** (1) Within 9 months after appointment, a personal representative who
25 is not a special administrator or a successor to another representative who has previously discharged this duty
26 shall prepare an inventory of property owned by the decedent at the time of the decedent's death, listing the
27 inventory of property with reasonable detail and indicating for each listed item its fair market value as of the date
28 of the decedent's death and the type and amount of any encumbrance that may exist with reference to the item.

29 (2) The inventory must include a statement of the ~~full and true~~ fair market value of the decedent's interest
30 in every item listed in the inventory. The personal representative may ~~appoint one or more~~ employ a qualified and

1 disinterested persons appraiser to assist the personal representative in ascertaining the fair market value as of
2 the date of the decedent's death of ~~all assets included in the estate~~ any asset the value of which may be subject
3 to reasonable doubt. Different persons may be employed to appraise different kinds of assets included in the
4 estate. The names and addresses of any ~~appraisers~~ appraiser must be indicated on the inventory with the item
5 or items appraised.

6 (3) The personal representative shall:

7 (a) send a copy of the inventory to ~~interested persons~~ the following who request it: heirs, devisees, and
8 creditors with allowed claims that have not been satisfied; or

9 (b) file the original of the inventory with the court and send a copy of the inventory to interested persons
10 who request it."

11
12 **Section 79.** Section 72-3-611, MCA, is amended to read:

13 **"72-3-611. No surcharge for authorized acts generally -- limitation.** (1) A personal representative
14 may not be surcharged for acts of administration or distribution if the conduct in question was authorized at the
15 time. Subject to other obligations of administration and of this code, an informally probated will is authority to
16 administer and distribute the estate according to its terms. Subject to the provisions of this code, an order of
17 appointment of a personal representative, whether issued in informal or formal proceedings, is authority to
18 distribute apparently intestate assets to the heirs of the decedent if, at the time of distribution, the personal
19 representative is not aware of a pending testacy proceeding, a proceeding to vacate an order entered in an earlier
20 testacy proceeding, a formal proceeding questioning the personal representative's appointment or fitness to
21 continue, or a supervised administration proceeding.

22 (2) This section does not affect the duty of the personal representative to administer and distribute the
23 estate in accordance with the rights of claimants whose claims have been allowed, the surviving spouse, any
24 minor and dependent children, and any pretermitted child of the decedent as described elsewhere in this code."

25
26 **Section 80.** Section 72-3-613, MCA, is amended to read:

27 **"72-3-613. Transactions authorized for personal representative.** Except as restricted by this code
28 or otherwise provided by the will or by an order in a formal proceeding and subject to the priorities stated in
29 72-3-901, a personal representative, acting reasonably for the benefit of the interested persons, may properly:

30 (1) retain assets owned by the decedent pending distribution or liquidation, including those in which the

1 representative is personally interested or which are otherwise improper for trust investment;

2 (2) receive assets from fiduciaries or other sources;

3 (3) perform, compromise, or refuse performance of the decedent's contracts that continue as obligations
4 of the estate, as the personal representative may determine under the circumstances. In performing enforceable
5 contracts by the decedent to convey or lease land, the personal representative, among other possible courses
6 of action, may:

7 (a) execute and deliver a deed of conveyance for cash payment of all sums remaining due or the
8 purchaser's note for the sum remaining due secured by a mortgage or deed of trust on the land; or

9 (b) deliver a deed in escrow with directions that the proceeds, when paid in accordance with the escrow
10 agreement, be paid to the successors of the decedent, as designated in the escrow agreement;

11 (4) satisfy written charitable pledges of the decedent irrespective of whether the pledges constituted
12 binding obligations of the decedent or were properly presented as claims, if in the judgment of the personal
13 representative the decedent would have wanted the pledges completed under the circumstances;

14 (5) if funds are not needed to meet debts and expenses currently payable and are not immediately
15 distributable, deposit or invest liquid assets of the estate, including money received from the sale of other assets,
16 in federally insured interest-bearing accounts, readily marketable secured loan arrangements, or other prudent
17 investments that would be reasonable for use by trustees generally. If the personal representative is authorized
18 to invest funds in United States obligations, the personal representative may invest in these obligations either
19 directly or in the form of securities of or other interests in an open-end or closed-end management type
20 investment company or investment trust registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1
21 through 80a-64), as amended, if:

22 (a) the portfolio of the investment company or investment trust is limited to United States government
23 obligations and repurchase agreements fully collateralized by United States government obligations; and

24 (b) the investment company or investment trust takes delivery of the collateral for any repurchase
25 agreement, either directly or through an authorized custodian.

26 (6) acquire or dispose of an asset, including land in this or another state, for cash or on credit, at public
27 or private sale and manage, develop, improve, exchange, partition, change the character of, or abandon an estate
28 asset;

29 (7) make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any
30 improvements, raze existing or erect new party walls or buildings;

(8) subdivide, develop, or dedicate land to public use; make or obtain the vacation of plats and adjust boundaries; adjust differences in valuation on exchange or partition by giving or receiving considerations; or dedicate easements to public use without consideration;

(9) enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, for a term within or extending beyond the period of administration;

(10) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(11) ~~with the consent of the heirs or devisees or the court,~~ abandon property when in the opinion of the personal representative it is valueless or is so encumbered or is in condition that it is of no benefit to the estate;

(12) vote stocks or other securities in person or by general or limited proxy;

(13) pay calls, assessments, and other sums chargeable or accruing against or on account of securities, unless barred by the provisions relating to claims;

(14) hold a security in the name of a nominee or in other form without disclosure of the interest of the estate, but the personal representative is liable for any act of the nominee in connection with the security so held;

(15) insure the assets of the estate against damage, loss, and liability and the personal representative against liability as to third persons;

(16) borrow money with or without security to be repaid from the estate assets or otherwise and advance money for the protection of the estate;

(17) ~~with the consent of the heirs or devisees or the court,~~ effect a fair and reasonable compromise with any debtor or obligor or extend, renew, or in any manner modify the terms of any obligation owing to the estate.

If the personal representative holds a mortgage, pledge, or other lien upon property of another person, the personal representative may, in lieu of foreclosure, accept a conveyance or transfer of encumbered assets from the owner thereof in satisfaction of the indebtedness secured by lien.

(18) pay taxes, assessments, compensation of the personal representative, and other expenses incident to the administration of the estate;

(19) sell or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

(20) allocate items of income or expense to either estate income or principal, as permitted or provided by law;

(21) employ persons, including attorneys, auditors, investment advisors, or agents, even if they are associated with the personal representative, to advise or assist the personal representative in the performance of the personal representative's administrative duties; act without independent investigation upon their recommendations; and, instead of acting personally, employ one or more agents to perform any act of administration, whether or not discretionary;

(22) prosecute or defend claims or proceedings in any jurisdiction for the protection of the estate and of the personal representative in the performance of the personal representative's duties;

(23) sell, mortgage, or lease any real or personal property of the estate or any interest therein for cash, credit, or for part cash and part credit and with or without security for unpaid balances; ~~provided, however, a personal representative may not, without prior court approval in a supervised proceeding, either directly or indirectly purchase any property of the estate that the personal representative represents, nor be interested in the sale. All sales must be fairly conducted and made for the best price obtainable.~~

(24) continue any unincorporated business or venture in which the decedent was engaged at the time of death in the same business form, including a sole proprietorship, partnership, or limited liability company, unless otherwise ordered by the court in a formal proceeding initiated by an interested person on the basis that continuation of the business is not in the best interests of the estate or its beneficiaries;

(25) incorporate any business or venture in which the decedent was engaged at the time of death;

(26) satisfy and settle claims and distribute the estate as provided in this code."

NEW SECTION. **Section 81. Powers of personal representatives in general.** (1) Until termination of his appointment a personal representative has the same power over the title to property of the estate that an absolute owner would have, in trust however, for the benefit of the creditors and others interested in the estate. This power may be exercised without notice, hearing, or order of court.

(2) A personal representative has access to and authority over a digital asset of the decedent to the extent provided by the Revised Uniform Fiduciary Access to Digital Assets Act or by order of court.

Section 82. Section 72-3-618, MCA, is amended to read:

"72-3-618. Persons dealing with personal representative -- protection. (1) A person who in good faith and without notice either assists a personal representative or deals with a personal representative for value is protected as if the personal representative properly exercised the personal representative's power. The fact

1 that a person knowingly deals with a personal representative does not alone require the person to inquire into
2 the existence of a power or the propriety of its exercise. Except for restrictions on powers of supervised personal
3 representatives that are endorsed on letters as provided in ~~72-3-404(3)~~ 72-3-404, a provision in any will or order
4 of court purporting to limit the power of a personal representative is not effective except as to persons with actual
5 knowledge of the provision.

6 (2) A person is not bound to see to the proper application of estate assets paid or delivered to a personal
7 representative.

8 (3) The protection expressed in this section extends to instances in which some procedural irregularity
9 or jurisdictional defect occurred in proceedings leading to the issuance of letters, including a case in which the
10 alleged decedent is found to be alive. The protection expressed in this section is not a substitution for that
11 provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers
12 of securities by fiduciaries."

13
14 **Section 83.** Section 72-3-631, MCA, is amended to read:

15 **"72-3-631. Compensation of personal representative.** (1) A personal representative is entitled to
16 reasonable compensation for services. ~~The compensation may not exceed 3% of the first \$40,000 of the value~~
17 ~~of the estate as reported for federal estate tax purposes and 2% of the value of the estate in excess of \$40,000~~
18 ~~as reported for federal estate tax purposes. However, a personal representative is entitled to a minimum~~
19 ~~compensation of the lesser of \$100 or the value of the gross estate.~~

20 ~~—— (2) In proceedings conducted for the termination of joint tenancies, the compensation of the personal~~
21 ~~representative may not exceed 2% of the interest passing.~~

22 ~~—— (3) In proceedings conducted for the termination of a life estate, the compensation allowed the personal~~
23 ~~representative may not exceed 2% of the value of the life estate if it is terminated in connection with a probate~~
24 ~~or joint tenancy termination. If a life estate is terminated separately, the personal representative's compensation~~
25 ~~may not exceed 2% of the value of the estate, except that it may not be less than \$100.~~

26 ~~—— (4) If there is more than one personal representative, only one compensation is allowed.~~

27 ~~—— (5) The court may allow additional compensation for extraordinary services. The additional compensation~~
28 ~~may not be greater than the amount that is allowed for the original compensation.~~

29 ~~(6)(2)~~ If the will provides for the compensation of the personal representative and there is no contract
30 with the decedent regarding compensation, the personal representative may renounce the provision before

1 qualifying and be entitled to compensation under the terms of this section. A personal representative also may
2 renounce the right to all or any part of the compensation. A written renunciation of fee may be filed with the court."

3
4 **Section 84.** Section 72-3-803, MCA, is amended to read:

5 **"72-3-803. Nonclaim -- limitations on presentation of claims -- exceptions.** (1) All claims against a
6 decedent's estate that arose before the death of the decedent, including claims of the state and any subdivision
7 of the state, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on
8 contract, tort, or other legal basis, if not barred earlier by other statute of limitations, are barred against the estate,
9 the personal representative, and the heirs and devisees and nonprobate transferees of the decedent unless
10 presented within the earlier of the following time limitations:

11 (a) within 1 year after the decedent's death; or

12 (b) within the time provided by 72-3-801(2) for creditors who are given actual notice and within the time
13 provided in 72-3-801(1) for all creditors barred by publication.

14 ~~(2) However, claims~~ A claim described in subsection (1) which is barred by the nonclaim statute at the
15 decedent's domicile before the giving of notice to creditors in this state ~~are also~~ is barred in this state.

16 ~~(2)(3)~~ (3) All claims against a decedent's estate that arise at or after the death of the decedent, including
17 claims of the state and any subdivision of the state, whether due or to become due, absolute or contingent,
18 liquidated or unliquidated, founded on contract, tort, or other legal basis, are barred against the estate, the
19 personal representative, and the heirs and devisees of the decedent unless presented as follows:

20 (a) a claim based on a contract with the personal representative, within 4 months after performance by
21 the personal representative is due;

22 (b) any other claim, within the later of 4 months after it arises or the time specified in subsection (1)(a).

23 ~~(3)(4)~~ (4) This section does not affect or prevent:

24 (a) any proceeding to enforce any mortgage, pledge, or other lien upon property of the estate;

25 (b) to the limits of the insurance protection only, any proceeding to establish liability of the decedent or
26 the personal representative for which the decedent or the personal representative is protected by liability
27 insurance; or

28 (c) collection of compensation for services rendered and reimbursement for expenses advanced by the
29 personal representative or by the attorney or accountant for the personal representative of the estate."

1 **Section 85.** Section 72-3-815, MCA, is amended to read:

2 **"72-3-815. Compromise of claims.** When a claim against the estate has been presented in any
3 manner, the personal representative ~~with the consent of the heirs or devisees or the court~~ may, if it appears for
4 the best interest of the estate, compromise the claim, whether due or not due, absolute or contingent, liquidated
5 or unliquidated."
6

7 **Section 86.** Section 72-3-917, MCA, is amended to read:

8 **"72-3-917. Distribution to person under disability.** (1) A personal representative may discharge the
9 personal representative's obligation to distribute to any person under legal disability by distributing in a manner
10 expressly provided in the will.

11 (2) Unless contrary to an express provision in the will, the personal representative may discharge the
12 personal representative's obligation to distribute to a minor or person under other disability as authorized by
13 72-5-104 or any other statute. If the personal representative knows that a conservator has been appointed or that
14 a proceeding for appointment of a conservator is pending, the personal representative is authorized to distribute
15 only to the conservator.

16 (3) (a) If the heir or devisee is under disability other than minority, the personal representative is
17 authorized to distribute to:

18 (i) an attorney-in-fact who has authority under a power of attorney to receive property for that person;
19 or

20 (ii) the spouse, parent, or other close relative with whom the person under disability resides if the
21 distribution is of amounts not exceeding \$10,000 a year or property not exceeding ~~\$40,000~~ \$50,000 in value,
22 unless the court authorizes a larger amount or greater value.

23 (b) Any person receiving money or property for the disabled person is obligated to apply the money or
24 property to the support of the disabled person, but the receiving person may not accept any pay except by way
25 of reimbursement for out-of-pocket expenses for goods and services necessary for the support of the disabled
26 person. Excess sums must be preserved for future support of the disabled person. The personal representative
27 is not responsible for the proper application of money or property distributed pursuant to this subsection (3)."
28

29 **Section 87.** Section 72-3-1012, MCA, is amended to read:

30 **"72-3-1012. Liability of distributees to claimants.** (1) After assets of an estate have been distributed

1 and subject to 72-3-1013, an undischarged claim that is not barred may be prosecuted in a proceeding against
2 one or more distributees. ~~A distributee is not liable to claimants~~ No distributee shall be liable to claimants for
3 amounts received as exempt property, homestead or family allowances, or for amounts in excess of the value
4 of the distributee's distribution as of the time of distribution or for amounts in excess of the value of the
5 distributee's distribution as of the time of distribution.

6 (2) As between distributees, each shall bear the cost of satisfaction of unbarred claims as if the claim
7 had been satisfied in the course of administration. Any distributee who fails to notify other distributees of the
8 demand made upon the distributee by the claimant in sufficient time to permit them to join in any proceeding in
9 which the claim was asserted against the distributee loses the right of contribution against other distributees."

10
11 **Section 88.** Section 72-3-1013, MCA, is amended to read:

12 **"72-3-1013. Limitation on actions against distributees.** (1) Unless previously adjudicated in a formal
13 testacy proceeding or in a proceeding settling the accounts of a personal representative or otherwise barred, the
14 claim of any claimant to recover from a distributee who is liable to pay the claim and the right of any heir or
15 devisee or of a successor personal representative acting in their behalf to recover property improperly distributed
16 or the value thereof from any distributee is forever barred at the later of 3 years after the decedent's death or 1
17 year after the time of distribution ~~thereof~~, but all claims of creditors of the decedent are barred 1 year after the
18 decedent's death.

19 (2) This section does not bar an action to recover property or value received as the result of fraud."
20

21 **Section 89.** Section 72-4-203, MCA, is amended to read:

22 **"72-4-203. Service on foreign personal representative.** (1) Service of process may be made upon
23 the foreign personal representative by registered or certified mail addressed to the foreign personal
24 representative's last reasonably ascertainable address requesting a return receipt signed by addressee only.
25 Notice by ordinary first-class mail is sufficient if registered or certified mail service to the addressee is unavailable.
26 Service may be made upon a foreign personal representative in the manner in which service could have been
27 made under other laws of this state on either the foreign personal representative or the foreign personal
28 representative's decedent immediately prior to death.

29 (2) If service is made upon a foreign personal representative as provided in subsection (1), the foreign
30 personal representative must be allowed at least 30 days within which to appear or respond."

1
2 **Section 90.** Section 72-6-111, MCA, is amended to read:

3 **"72-6-111. Nonprobate transfers on death.** (1) A provision for a nonprobate transfer on death in an
4 insurance policy, contract of employment, bond, mortgage, promissory note, certificated or uncertificated security,
5 account agreement, custodial agreement, deposit agreement, compensation plan, pension plan, individual
6 retirement plan, employee benefit plan, trust, conveyance, deed of gift, ~~beneficiary transfer on death~~ deed, as
7 defined in ~~72-6-124~~ [section 94], marital property agreement, or other written instrument of a similar nature is
8 nontestamentary. This subsection includes a written provision that:

9 (a) money or other benefits due to, controlled by, or owned by a decedent before death must be paid
10 after the decedent's death to a person whom the decedent designates either in the instrument or in a separate
11 writing, including a will, executed either before or at the same time as the instrument or later;

12 (b) money due or to become due under the instrument ceases to be payable in the event of death of the
13 promisee or the promisor before payment or demand; or

14 (c) any property controlled by or owned by the decedent before death that is the subject of the instrument
15 passes to a person the decedent designates either in the instrument or in a separate writing, including a will,
16 executed either before or at the same time as the instrument or later.

17 (2) This section does not limit rights of creditors under other laws of this state."
18

19 **NEW SECTION. Section 91. Liability of nonprobate transferees for creditor claims and statutory**
20 **allowances.** (1) In this section, "nonprobate transfer" means a valid transfer effective at death, other than a
21 transfer of a survivorship interest in a joint tenancy of real estate, by a transferor whose last domicile was in this
22 state to the extent that the transferor immediately before death had power, acting alone, to prevent the transfer
23 by revocation or withdrawal and instead to use the property for the benefit of the transferor or apply it to discharge
24 claims against the transferor's probate estate.

25 (2) Except as otherwise provided by statute, a transferee of a nonprobate transfer is subject to liability
26 to any probate estate of the decedent for allowed claims against decedent's probate estate and statutory
27 allowances to the decedent's spouse and children to the extent the estate is insufficient to satisfy those claims
28 and allowances. The liability of a nonprobate transferee may not exceed the value of nonprobate transfers
29 received or controlled by that transferee.

30 (3) Nonprobate transferees are liable for the insufficiency described in subsection (2) in the following

1 order of priority:

2 (a) a transferee designated in the decedent's will or any other governing instrument, as provided in the
3 instrument;

4 (b) the trustee of a trust serving as the principal nonprobate instrument in the decedent's estate plan as
5 shown by its designation as devisee of the decedent's residuary estate or by other facts or circumstances, to the
6 extent of the value of the nonprobate transfer received or controlled;

7 (c) other nonprobate transferees, in proportion to the values received.

8 (4) Unless otherwise provided by the trust instrument, interests of beneficiaries in all trusts incurring
9 liabilities under this section abate as necessary to satisfy the liability, as if all of the trust instruments were a single
10 will and the interests were devised under it.

11 (5) A provision made in one instrument may direct the apportionment of the liability among the nonprobate
12 transferees taking under that or any other governing instrument. If a provision in one instrument conflicts with
13 a provision in another, the later one prevails.

14 (6) Upon due notice to a nonprobate transferee, the liability imposed by this section is enforceable in
15 proceedings in this state, whether or not the transferee is located in this state.

16 (7) A proceeding under this section may not be commenced unless the personal representative of the
17 decedent's estate has received a written demand for the proceeding from the surviving spouse or a child, to the
18 extent that statutory allowances are affected, or a creditor. If the personal representative declines or fails to
19 commence a proceeding after demand, a person making demand may commence the proceeding in the name
20 of the decedent's estate, at the expense of the person making the demand and not of the estate. A personal
21 representative who declines in good faith to commence a requested proceeding incurs no personal liability for
22 declining.

23 (8) A proceeding under this section must be commenced within 1 year after the decedent's death, but
24 a proceeding on behalf of a creditor whose claim was allowed after proceedings challenging disallowance of the
25 claim may be commenced within 60 days after final allowance of the claim.

26 (9) Unless a written notice asserting that a decedent's probate estate is nonexistent or insufficient to pay
27 allowed claims and statutory allowances has been received from the decedent's personal representative, the
28 following rules apply:

29 (a) Payment or delivery of assets by a financial institution, registrar, or other obligor, to a nonprobate
30 transferee in accordance with the terms of the governing instrument controlling the transfer releases the obligor

1 from all claims for amounts paid or assets delivered.

2 (b) A trustee receiving or controlling a nonprobate transfer is released from liability under this section with
3 respect to any assets distributed to the trust's beneficiaries. Each beneficiary to the extent of the distribution
4 received becomes liable for the amount of the trustee's liability attributable to assets received by the beneficiary.

5
6 **Section 92.** Section 72-6-213, MCA, is amended to read:

7 **"72-6-213. Alteration of rights.** (1) Rights at death under 72-6-212 are determined by the terms of the
8 account at the death of a party.

9 (2) Except as provided in subsection (3) and unless otherwise agreed in writing between the parties to
10 the account, the terms of an account may be altered by written notice given by a party to the financial institution
11 to change the terms of account or to stop or vary payment under the terms of the account. The notice must be
12 signed by a party and received by the financial institution during the party's lifetime.

13 (3) A financial institution may, in its discretion, refuse to honor a request for alteration of rights that would
14 change:

15 (a) the financial institution's obligations or rights under the contract of deposit; or

16 (b) the parties to a multiple-party account if the request is not signed by all of the parties to the account,
17 unless all the parties executed a Multiple-Party Account Form under 72-6-204 that expressly indicates that
18 account terms may be changed by a single party.

19 (4) A right of survivorship arising from the express terms of the account, from 72-6-212, or from a POD
20 designation may not be altered by will."

21
22 **NEW SECTION. Section 93. Short title.** [Sections 93 through 110] may be cited as the "Uniform Real
23 Property Transfer on Death Act".

24
25 **NEW SECTION. Section 94. Definitions.** As used in [sections 93 through 110], the following definitions
26 apply:

27 (1) "Beneficiary" means a person that receives property under a transfer on death deed.

28 (2) "Designated beneficiary" means a person designated to receive property in a transfer on death deed.

29 (3) "Joint owner" means an individual who owns property concurrently with one or more other individuals
30 with a right of survivorship. The term includes a joint tenant. The term does not include a tenant in common.

(4) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(5) "Property" means an interest in real property located in this state which is transferable on the death of the owner.

(6) "Transfer on death deed" means a deed authorized under this part.

(7) "Transferor" means an individual who makes a transfer on death deed.

NEW SECTION. Section 95. Applicability. [Sections 93 through 110] applies to a transfer on death deed made before, on, or after [the effective date of this act] by a transferor dying on or after [the effective date of this act].

NEW SECTION. Section 96. Nonexclusivity. [Section 93 through 110] does not affect any method of transferring property otherwise permitted under the law of this state.

NEW SECTION. Section 97. Transfer on death deed authorized. An individual may transfer property to one or more beneficiaries effective at the transferor's death by a transfer on death deed.

NEW SECTION. Section 98. Transfer on death deed revocable. A transfer on death deed is revocable even if the deed or another instrument contains a contrary provision.

NEW SECTION. Section 99. Transfer on death deed nontestamentary. A transfer on death deed is nontestamentary.

NEW SECTION. Section 100. Capacity of transferor. The capacity required to make or revoke a transfer on death deed is the same as the capacity required to make a will.

NEW SECTION. Section 101. Requirements. A transfer on death deed:

(1) except as otherwise provided in subsection (2), must contain the essential elements and formalities of a properly recordable inter vivos deed;

(2) must state that the transfer to the designated beneficiary is to occur at the transferor's death; and
(3) must be recorded before the transferor's death in the public records in the office of the county clerk and recorder of the county where the property is located.

NEW SECTION. Section 102. Notice, delivery, acceptance, consideration not required. A transfer on death deed is effective without:

- (1) notice or delivery to or acceptance by the designated beneficiary during the transferor's life; or
- (2) consideration.

NEW SECTION. Section 103. Revocation by instrument authorized -- revocation by act not permitted. (1) Subject to subsection (2), an instrument is effective to revoke a recorded transfer on death deed, or any part of it, only if the instrument:

(a) is one of the following:

- (i) a transfer on death deed that revokes the deed or part of the deed expressly or by inconsistency;
- (ii) an instrument of revocation that expressly revokes the deed or part of the deed;
- (iii) an inter vivos deed that expressly revokes the transfer on death deed or part of the deed; and

(b) is acknowledged by the transferor after the acknowledgment of the deed being revoked and recorded before the transferor's death in the public records in the office of the county clerk and recorder of the county where the deed is recorded.

(2) If a transfer on death deed is made by more than one transferor:

- (a) revocation by a transferor does not affect the deed as to the interest of another transferor; and
- (b) a deed of joint owners is revoked only if it is revoked by all of the living joint owners.

(3) After a transfer on death deed is recorded, it may not be revoked by a revocatory act on the deed.

(4) This section does not limit the effect of an inter vivos transfer of the property, which revokes any prior transfer on death deed to the property.

NEW SECTION. Section 104. Effect of transfer on death deed during transferor's life. During a transferor's life, a transfer on death deed does not:

(1) affect an interest or right of the transferor or any other owner, including the right to transfer or encumber the property;

(2) affect an interest or right of a transferee, even if the transferee has actual or constructive notice of the deed;

(3) affect an interest or right of a secured or unsecured creditor or future creditor of the transferor, even if the creditor has actual or constructive notice of the deed;

(4) affect the transferor's or designated beneficiary's eligibility for any form of public assistance;

(5) create a legal or equitable interest in favor of the designated beneficiary; or

(6) subject the property to claims or process of a creditor of the designated beneficiary.

NEW SECTION. Section 105. Effect of transfer on death deed at transferor's death. (1) Except as otherwise provided in the transfer on death deed, in [section 91], or in this section, and subject to chapter 2, part 2, of this title, on the death of the transferor, the following rules apply to property that is the subject of a transfer on death deed and owned by the transferor at death:

(a) Subject to subsection (1)(b), the interest in the property is transferred to the designated beneficiary in accordance with the deed.

(b) The interest of a designated beneficiary is contingent on the designated beneficiary surviving the transferor. The interest of a designated beneficiary that fails to survive the transferor lapses.

(c) Subject to subsection (1)(d), concurrent interests are transferred to the beneficiaries in equal and undivided shares with no right of survivorship.

(d) If the transferor has identified two or more designated beneficiaries to receive concurrent interests in the property, the share of one which lapses or fails for any reason is transferred to the other, or to the others in proportion to the interest of each in the remaining part of the property held concurrently.

(2) Subject to Title 70, chapter 21, a beneficiary takes the property subject to all conveyances, encumbrances, assignments, contracts, mortgages, liens, and other interests to which the property is subject at the transferor's death. For purposes of this subsection and Title 70, chapter 21, the recording of the transfer on death deed is deemed to have occurred at the transferor's death.

(3) If a transferor is a joint owner and is:

(a) survived by one or more other joint owners, the property that is the subject of a transfer on death deed belongs to the surviving joint owner or owners with right of survivorship; or

(b) the last surviving joint owner, the transfer on death deed is effective.

(4) A transfer on death deed transfers property without covenant or warranty of title even if the deed

contains a contrary provision.

NEW SECTION. Section 106. Disclaimer. A beneficiary may disclaim all or part of the beneficiary's interest as provided by [sections 47 through 63], the Uniform Disclaimer of Property Interests Act.

NEW SECTION. Section 107. Liability for creditor claims and statutory allowances. A beneficiary of a transfer on death deed is liable for an allowed claim against the transferor's probate estate and statutory allowances to a surviving spouse and children to the extent provided in [section 91].

NEW SECTION. Section 108. Optional form of transfer on death deed. The following form may be used to create a transfer on death deed. The other sections of [sections 93 through 110] govern the effect of this or any other instrument used to create a transfer on death deed:

(front of form)

REVOCABLE TRANSFER ON DEATH DEED

NOTICE TO OWNER

You should carefully read all information on the other side of this form. You May Want to Consult a Lawyer Before Using This Form.

This form must be recorded before your death, or it will not be effective.

IDENTIFYING INFORMATION

Owner or Owners Making This Deed:

_____	_____
Printed name	Mailing address

_____	_____
Printed name	Mailing address

Legal description of the property:

PRIMARY BENEFICIARY

I designate the following beneficiary if the beneficiary survives me.

1 Printed name Mailing address, if available

2 ALTERNATE BENEFICIARY - Optional

3 If my primary beneficiary does not survive me, I designate the following alternate beneficiary if that beneficiary
4 survives me.

5 _____

6 Printed name Mailing address, if available

7 TRANSFER ON DEATH

8 At my death, I transfer my interest in the described property to the beneficiaries as designated above.

9 Before my death, I have the right to revoke this deed.

10 SIGNATURE OF OWNER OR OWNERS MAKING THIS DEED

11 _____ [(SEAL)] _____

12 Signature Date

13 _____ [(SEAL)] _____

14 Signature Date

15 ACKNOWLEDGMENT

16 (insert acknowledgment for deed here)

17 (back of form)

18 COMMON QUESTIONS ABOUT THE USE OF THIS FORM

19 What does the Transfer on Death (TOD) deed do? When you die, this deed transfers the described property,
20 subject to any liens or mortgages (or other encumbrances) on the property at your death. Probate is not required.

21 The TOD deed has no effect until you die. You can revoke it at any time. You are also free to transfer the
22 property to someone else during your lifetime. If you do not own any interest in the property when you die, this
23 deed will have no effect.

24 How do I make a TOD deed? Complete this form. Have it acknowledged before a notary public or other individual
25 authorized by law to take acknowledgments. Record the form in each county where any part of the property is
26 located. The form has no effect unless it is acknowledged and recorded before your death.

27 Is the "legal description" of the property necessary? Yes.

28 How do I find the "legal description" of the property? This information may be on the deed you received when you
29 became an owner of the property. This information may also be available in the office of the county clerk and
30 recorder for the county where the property is located. If you are not absolutely sure, consult a lawyer.

Can I change my mind before I record the TOD deed? Yes. If you have not yet recorded the deed and want to change your mind, simply tear up or otherwise destroy the deed.

How do I "record" the TOD deed? Take the completed and acknowledged form to the office of the county clerk and recorder of the county where the property is located. Follow the instructions given by the county clerk and recorder to make the form part of the official property records. If the property is in more than one county, you should record the deed in each county.

Can I later revoke the TOD deed if I change my mind? Yes. You can revoke the TOD deed. No one, including the beneficiaries, can prevent you from revoking the deed.

How do I revoke the TOD deed after it is recorded? There are three ways to revoke a recorded TOD deed:

(1) Complete and acknowledge a revocation form, and record it in each county where the property is located.

(2) Complete and acknowledge a new TOD deed that disposes of the same property, and record it in each county where the property is located.

(3) Transfer the property to someone else during your lifetime by a recorded deed that expressly revokes the TOD deed. You may not revoke the TOD deed by will.

I am being pressured to complete this form. What should I do? Do not complete this form under pressure. Seek help from a trusted family member, friend, or lawyer.

Do I need to tell the beneficiaries about the TOD deed? No, but it is recommended. Secrecy can cause later complications and might make it easier for others to commit fraud.

I have other questions about this form. What should I do? This form is designed to fit some but not all situations. If you have other questions, you are encouraged to consult a lawyer.

NEW SECTION. Section 109. Optional form of revocation. The following form may be used to create an instrument of revocation under [sections 93 through 110]. The other sections of [sections 93 through 110] govern the effect of this or any other instrument used to revoke a transfer on death deed.

(front of form)

REVOCATION OF TRANSFER ON DEATH DEED

NOTICE TO OWNER

This revocation must be recorded before you die or it will not be effective. This revocation is effective only as to the interests in the property of owners who sign this revocation.

1 IDENTIFYING INFORMATION

2 Owner or Owners of Property Making This Revocation:

3 _____

4 Printed name

Mailing address

5 _____

6 Printed name

Mailing address

7 Legal description of the property:

8 _____

9 _____

10 REVOCATION

11 I revoke all my previous transfers of this property by transfer on death deed.

12 SIGNATURE OF OWNER OR OWNERS MAKING THIS REVOCATION

13 _____ [(SEAL)] _____

14 Signature

15 Date

16 _____ [(SEAL)] _____

17 Signature

18 Date

19

20 ACKNOWLEDGMENT

21 (insert acknowledgment here)

22 (back of form)

23 COMMON QUESTIONS ABOUT THE USE OF THIS FORM

24 How do I use this form to revoke a Transfer on Death (TOD) deed? Complete this form. Have it acknowledged
25 before a notary public or other individual authorized to take acknowledgments. Record the form in the public
26 records in the office of the county clerk and recorder of each county where the property is located. The form must
27 be acknowledged and recorded before your death or it has no effect.

28 How do I find the "legal description" of the property? This information may be on the TOD deed. It may also be
29 available in the office of the county clerk and recorder for the county where the property is located. If you are not
30 absolutely sure, consult a lawyer.

How do I "record" the form? Take the completed and acknowledged form to the office of the county clerk and recorder of deeds of the county where the property is located. Follow the instructions given by the county clerk and recorder to make the form part of the official property records. If the property is located in more than one county, you should record the form in each of those counties.

I am being pressured to complete this form. What should I do? Do not complete this form under pressure. Seek help from a trusted family member, friend, or lawyer.

I have other questions about this form. What should I do? This form is designed to fit some but not all situations. If you have other questions, consult a lawyer.

NEW SECTION. **Section 110. Prior executed and recorded beneficiary deed.** Any beneficiary deed that was executed and recorded prior to [the effective date of this act] and which complied with the law in effect when it was recorded, shall be deemed to be a transfer on death deed for the purposes of [sections 93 through 110].

Section 111. Section 72-7-305, MCA, is amended to read:

"72-7-305. Permissible appointment. (1) A powerholder of a general power of appointment that permits appointment to the powerholder or the powerholder's estate may make any appointment, including an appointment in trust or creating a new power of appointment, that the powerholder could make in disposing of the powerholder's own property.

(2) A powerholder of a general power of appointment that permits appointment only to the creditors of the powerholder or of the powerholder's estate may appoint only to those creditors.

(3) Unless the terms of the instrument creating a power of appointment manifest a contrary intent, the powerholder of a nongeneral power may:

(a) make an appointment in any form, including an appointment in trust, in favor of a permissible appointee;

(b) create a general power in a permissible appointee; ~~or~~

(c) create a nongeneral power in any person to appoint to one or more of the permissible appointees of the original nongeneral power; or

(d) create a nongeneral power in a permissible appointee to appoint to one or more persons if the permissible appointees of the new nongeneral power include the permissible appointees of the original

1 nongeneral power."

2
3 **Section 112.** Section 72-7-401, MCA, is amended to read:

4 **"72-7-401. Disclaimer.** As provided by ~~72-2-811~~ [sections 55 and 56]:

5 (1) a powerholder may disclaim all or part of a power of appointment; and

6 (2) a permissible appointee, appointee, or taker in default of appointment may disclaim all or part of an
7 interest in appointive property."

8
9 **Section 113.** Section 72-15-301, MCA, is amended to read:

10 **"72-15-301. Compensation of public administrator.** (1) The public administrator must receive and
11 shall collect for the administrator's own use as full compensation for services under this chapter, ~~including~~
12 ~~attorney fees, the amounts~~ the amount provided for in 72-3-631 ~~and 72-3-633.~~

13 (2) When the public administrator is appointed conservator of the estate of a protected person pursuant
14 to chapter 5, part 4, of this title, the court may order that a reasonable sum be deducted from payments due to
15 the protected person or from the protected person's estate to be paid to the public administrator as full
16 compensation for the public administrator's services, excluding court costs and attorney fees. The total sum
17 deducted as compensation for the public administrator may not be less than \$100."

18
19 NEW SECTION. **Section 114. Directions to code commissioner.** (1) The code commissioner is
20 instructed to renumber 72-2-223, 72-2-225, 72-2-228, and 72-2-230 in accordance with the Uniform Probate
21 Code.

22 (2) The code commissioner is instructed to change all internal references within and to the renumbered
23 sections in the Montana Code Annotated, including within sections enacted or amended by the 2019 legislature,
24 to reflect new section numbers assigned pursuant to this section.

25
26 NEW SECTION. **Section 115. Codification instruction.** (1) [Section 1] is intended to be codified as
27 an integral part of Title 72, chapter 1, and the provisions of Title 72, chapter 1, apply to [section 1].

28 (2) [Section 2] is intended to be codified as an integral part of Title 72, and the provisions of Title 72 apply
29 to [section 2].

30 (3) [Sections 12 through 29] are intended to be codified as an integral part of Title 72, chapter 2, part 2,

1 and the provisions of Title 72, chapter 2, part 2, apply to [sections 12 through 29].

2 (4) [Section 40] is intended to be codified as an integral part of Title 72, chapter 2, part 7, and the
3 provisions of Title 72, chapter 2, part 7, apply to [section 40].

4 (5) [Sections 45 through 63] are intended to be codified as an integral part of Title 72, chapter 2, part 8,
5 and the provisions of Title 72, chapter 2, part 8, apply to [sections 45 through 63].

6 (6) [Section 65] is intended to be codified as an integral part of Title 72, chapter 3, part 1, and the
7 provisions of Title 72, chapter 3, part 1, apply to [section 65].

8 (7) [Section 72] is intended to be codified as an integral part of Title 72, chapter 3, part 3, and the
9 provisions of Title 72, chapter 3, part 3, apply to [section 72].

10 (8) [Section 81] is intended to be codified as an integral part of Title 72, chapter 3, part 6, and the
11 provisions of Title 72, chapter 3, part 6, apply to [section 81].

12 (9) [Section 91] is intended to be codified as an integral part of Title 72, chapter 6, part 1, and the
13 provisions of Title 72, chapter 6, part 1, apply to [section 91].

14 (10) [Sections 93 through 110] are intended to be codified as an integral part of Title 72, chapter 6, and
15 the provisions of Title 72, chapter 6, apply to [sections 93 through 110].

16
17 **NEW SECTION. Section 116. Repealer.** The following sections of the Montana Code Annotated are
18 repealed:

19 72-2-124. Parent and child relationship.

20 72-2-215. Reporting duty of personal representative in estate involving alien heir.

21 72-2-221. Elective share.

22 72-2-222. Augmented estate.

23 72-2-224. Waiver of right to elect and of other rights.

24 72-2-226. Effect of election on statutory benefits.

25 72-2-227. Sources from which elective share payable.

26 72-2-715. Class gifts construed to accord with intestate succession.

27 72-2-811. Disclaimer of property interests.

28 72-2-1017. Honorary trusts -- trusts for pets.

29 72-3-113. Rules for determining location of property.

30 72-3-309. Testimony of attesting witnesses in contested cases -- presumptions for self-proved will.

- 1 72-3-633. Compensation of attorney.
- 2 72-6-121. Beneficiary deed -- form -- definitions.
- 3 72-6-123. Liability for creditor claims and statutory allowances.
- 4 - END -

SENATE BILL NO. 225

INTRODUCED BY S. FITZPATRICK, K. DUDIK, J. KRAUTTER, M. MCNALLY, B. MERCER

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE PROVISIONS OF THE UNIFORM PROBATE CODE; REVISING ESTATES, TRUSTS, AND FIDUCIARY RELATIONSHIP LAWS; ADOPTING THE UNIFORM DISCLAIMER OF PROPERTY INTERESTS ACT; ADOPTING THE UNIFORM REAL PROPERTY TRANSFER ON DEATH ACT; AMENDING SECTIONS 72-1-103, 72-1-201, 72-1-208, 72-1-302, 72-1-303, 72-2-112, 72-2-114, 72-2-116, 72-2-118, 72-2-223, 72-2-225, 72-2-228, 72-2-230, 72-2-412, 72-2-413, 72-2-415, 72-2-613, 72-2-616, 72-2-712, 72-2-716, 72-2-717, 72-2-813, 72-2-814, 72-3-102, 72-3-112, 72-3-122, 72-3-131, 72-3-201, 72-3-202, 72-3-203, 72-3-401, 72-3-404, 72-3-502, 72-3-504, 72-3-514, 72-3-607, 72-3-611, 72-3-613, 72-3-618, 72-3-631, 72-3-803, 72-3-815, 72-3-917, 72-3-1012, 72-3-1013, 72-4-203, 72-6-111, 72-6-213, ~~72-7-305~~, 72-7-401, AND 72-15-301, MCA; AND REPEALING SECTIONS ~~72-2-124~~, 72-2-215, 72-2-221, 72-2-222, 72-2-224, 72-2-226, 72-2-227, 72-2-715, 72-2-811, ~~72-2-1017~~, 72-3-113, 72-3-309, 72-3-633, 72-6-121, AND 72-6-123, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Purpose -- rule of construction. (1) This code shall be liberally construed and applied to promote its underlying purposes and policies.

(2) The underlying purposes and policies of this code are to:

(a) simplify and clarify the law concerning the affairs of decedents, missing persons, protected persons, minors, and incapacitated persons;

(b) discover and make effective the intent of a decedent in distribution of the decedent's property;

(c) promote a speedy and efficient system for liquidating the estate of the decedent and making distribution to the decedent's successors;

(d) facilitate use and enforcement of certain trusts; and

(e) make uniform the law among the various jurisdictions.

NEW SECTION. Section 2. Severability. If any provision of this code or the application of this code to any person or circumstances is held invalid, the invalidity may not affect other provisions or applications of the

code which can be given effect without the invalid provision or application, and to this end the provisions of this code are declared to be severable.

Section 3. Section 72-1-103, MCA, is amended to read:

"72-1-103. General definitions. Subject to additional definitions contained in the subsequent chapters that are applicable to specific chapters, parts, or sections and unless the context otherwise requires, in chapters 1 through 6, the following definitions apply:

(1) "Agent" includes an attorney-in-fact under a durable or nondurable power of attorney, an individual authorized to make decisions concerning another's health care, and an individual authorized to make decisions for another under a natural death act.

(2) "Application" means a written request to the clerk for an order of informal probate or appointment under chapter 3, part 2.

(3) "Beneficiary", as it relates to:

(a) a trust beneficiary, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer;

(b) a charitable trust, includes any person entitled to enforce the trust;

(c) a beneficiary of a beneficiary designation, refers to a beneficiary of:

(i) an account with POD designation or a security registered in beneficiary form (TOD); or

(ii) any other nonprobate transfer at death; and

(d) a beneficiary designated in a governing instrument, includes a grantee of a deed, a devisee, a trust beneficiary, a beneficiary of a beneficiary designation, a donee, and a person in whose favor a power of attorney or a power held in any individual, fiduciary, or representative capacity is exercised.

(4) "Beneficiary designation" refers to a governing instrument naming a beneficiary of:

(a) an account with POD designation or a security registered in beneficiary form (TOD); or

(b) any other nonprobate transfer at death.

(5) "Child" includes an individual entitled to take as a child under chapters 1 through 5 by intestate succession from the parent whose relationship is involved and excludes a person who is only a stepchild, a foster child, a grandchild, or any more remote descendant.

(6) (a) "Claims", in respect to estates of decedents and protected persons, includes liabilities of the decedent or protected person, whether arising in contract, in tort, or otherwise, and liabilities of the estate that

1 arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses
2 and expenses of administration.

3 (b) The term does not include estate taxes or demands or disputes regarding title of a decedent or
4 protected person to specific assets alleged to be included in the estate.

5 (7) "Clerk" or "clerk of court" means the clerk of the district court.

6 (8) "Conservator" means a person who is appointed by a court to manage the estate of a protected
7 person.

8 (9) "Court" means the district court in this state having jurisdiction in matters relating to the affairs of
9 decedents.

10 (10) "Descendant" of an individual means all of the individual's descendants of all generations, with the
11 relationship of parent and child at each generation being determined by the definition of child and parent
12 contained in this ~~section~~ code.

13 (11) "Devise" when used as a noun means a testamentary disposition of real or personal property and
14 when used as a verb means to dispose of real or personal property by will.

15 (12) "Devisee" means a person designated in a will to receive a devise. For purposes of chapter 3, in the
16 case of a devise to an existing trust or trustee or to a trustee or trust described by will, the trust or trustee is the
17 devisee and the beneficiaries are not devisees.

18 (13) "Disability" means cause for a protective order as described by 72-5-409.

19 (14) "Distributee" means any person who has received property of a decedent from the decedent's
20 personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the
21 extent of distributed assets or increment to distributed assets remaining in the trustee's hands. A beneficiary of
22 a testamentary trust to whom the trustee has distributed property received from a personal representative is a
23 distributee of the personal representative. For purposes of this provision, "testamentary trustee" includes a trustee
24 to whom assets are transferred by will, to the extent of the devised assets.

25 (15) "Estate" includes the property of the decedent, trust, or other person whose affairs are subject to
26 chapters 1 through 5 as originally constituted and as it exists from time to time during administration.

27 (16) "Exempt property" means that property of a decedent's estate that is described in 72-2-413.

28 (17) "Fiduciary" includes a personal representative, guardian, conservator, and trustee.

29 (18) "Foreign personal representative" means a personal representative appointed by another jurisdiction.

30 (19) "Formal proceedings" means proceedings conducted before a judge with notice to interested

1 persons.

2 (20) "Governing instrument" means a deed; will; trust; insurance or annuity policy; account with POD
3 designation; security registered in beneficiary form (TOD); pension, profit-sharing, retirement, or similar benefit
4 plan; instrument creating or exercising a power of appointment or a power of attorney; or dispositive, appointive,
5 or nominative instrument of any similar type.

6 (21) "Guardian" means a person who has qualified as a guardian of a minor or incapacitated person
7 pursuant to testamentary or court appointment but excludes one who is merely a guardian ad litem.

8 (22) "Heirs", except as controlled by 72-2-721, means persons, including the surviving spouse and the
9 state, who are entitled under the statutes of intestate succession to the property of a decedent.

10 (23) "Incapacitated person" has the meaning provided in 72-5-101.

11 (24) "Informal proceedings" means proceedings conducted without notice to interested persons by the
12 clerk of court for probate of a will or appointment of a personal representative.

13 (25) "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries, and any
14 others having a property right in or claim against a trust estate or the estate of a decedent, ward, or protected
15 person. The term also includes persons having priority for appointment as personal representative and other
16 fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time
17 to time and must be determined according to the particular purposes of and matter involved in any proceeding.

18 (26) "Issue" of a person means a descendant.

19 (27) "Joint tenants with the right of survivorship" includes co-owners of property held under circumstances
20 that entitle one or more to the whole of the property on the death of the other or others but excludes forms of
21 co-ownership registration in which the underlying ownership of each party is in proportion to that party's
22 contribution.

23 (28) "Lease" includes an oil, gas, coal, or other mineral lease.

24 (29) "Letters" includes letters testamentary, letters of guardianship, letters of administration, and letters
25 of conservatorship.

26 (30) "Minor" means a person who is under 18 years of age.

27 (31) "Mortgage" means any conveyance, agreement, or arrangement in which property is used as
28 security.

29 (32) "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of
30 death.

(33) "Organization" means a corporation, business trust, estate, trust, partnership, joint venture, association, government or governmental subdivision or agency, or any other legal or commercial entity.

(34) "Parent" includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under chapters 1 through 5 by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent, or grandparent.

(35) "Payor" means a trustee, insurer, business entity, employer, government, governmental agency or subdivision, or any other person authorized or obligated by law or a governing instrument to make payments.

(36) "Person" means an individual, a corporation, an organization, or other legal entity.

(37) "Personal representative" includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status. "General personal representative" excludes special administrator.

(38) "Petition" means a written request to the court for an order after notice.

(39) "Proceeding" includes action at law and suit in equity.

(40) "Property" includes both real and personal property or any interest in that property and means anything that may be the subject of ownership.

(41) "Protected person" has the meaning provided in 72-5-101.

(42) "Protective proceeding" has the meaning provided in 72-5-101.

(43) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

~~(43)~~(44) "Security" includes any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; collateral trust certificate; transferable share; voting trust certificate; in general, any interest or instrument commonly known as a security; any certificate of interest or participation; or any temporary or interim certificate, receipt, or certificate of deposit for or any warrant or right to subscribe to or purchase any of the foregoing.

~~(44)~~(45) "Settlement", in reference to a decedent's estate, includes the full process of administration, distribution, and closing.

(46) "Sign" means, with present intent to authenticate or adopt a record other than a will:

(a) to execute or adopt a tangible symbol; or

(b) to attach to or logically associate with the record an electronic symbol, sound, or process.

~~(45)~~(47) "Special administrator" means a personal representative as described by chapter 3, part 7.

~~(46)~~(48) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

~~(47)~~(49) "Successor personal representative" means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.

~~(48)~~(50) "Successors" means persons, other than creditors, who are entitled to property of a decedent under the decedent's will or chapters 1 through 5.

~~(49)~~(51) "Supervised administration" refers to the proceedings described in chapter 3, part 4.

~~(50)~~(52) "Survive" means that an individual has neither predeceased an event, including the death of another individual, nor is considered to have predeceased an event under 72-2-114 or 72-2-712. The term includes its derivatives, such as "survives", "survived", "survivor", and "surviving".

~~(51)~~(53) "Testacy proceeding" means a proceeding to establish a will or determine intestacy.

~~(52)~~(54) "Testator" includes an individual of either sex.

~~(53)~~(55) "Trust" includes an express trust, private or charitable, with additions to the trust, wherever and however created. The term also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. The term excludes other constructive trusts and excludes resulting trusts; conservatorships; personal representatives; trust accounts as defined in 72-6-111 and Title 72, chapter 6, parts 2 and 3; custodial arrangements pursuant to chapter 26; business trusts providing for certificates to be issued to beneficiaries; common trust funds; voting trusts; security arrangements; liquidation trusts; trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind; and any arrangement under which a person is nominee or escrowee for another.

~~(54)~~(56) "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by court.

~~(55)~~(57) "Ward" means an individual described in 72-5-101.

~~(56)~~(58) "Will" includes codicil and any testamentary instrument that merely appoints an executor, revokes or revises another will, nominates a guardian, or expressly excludes or limits the right of an individual or class to succeed to property of the decedent passing by intestate succession."

Section 4. Section 72-1-201, MCA, is amended to read:

"72-1-201. Territorial application. Except as otherwise provided in this code, this code applies to:

- 1 (1) the affairs and estates of decedents, missing persons, and persons to be protected in this state;
2 (2) the property of nonresidents located in this state or property coming into the control of a fiduciary who
3 is subject to the laws of this state; ~~and~~
4 (3) incapacitated persons and minors in this state; and
5 (4) survivorship and related accounts in this state."
6

7 **Section 5.** Section 72-1-208, MCA, is amended to read:

8 **"72-1-208. Jury trial.** (1) If duly demanded, a party is entitled to trial by jury in a formal testacy
9 proceeding, ~~a formal proceeding for determination of heirship, and any other proceeding as may be provided for~~
10 ~~by law~~ and any proceeding in which any controverted question of fact arises as to which any party has a
11 constitutional right to trial by jury.

12 (2) If there is no right to trial by jury under subsection (1) or the right is waived, the court in its discretion
13 may call a jury to decide any issue of fact, in which case the verdict is advisory only."
14

15 **Section 6.** Section 72-1-302, MCA, is amended to read:

16 **"72-1-302. Waiver of notice.** A person, including a guardian ad litem, conservator, or other fiduciary,
17 may waive notice by a writing signed by the person or the person's attorney and filed in the proceeding. A person
18 for whom a guardianship or other protective order is sought, a ward, or a protected person may not waive notice."
19

20 **Section 7.** Section 72-1-303, MCA, is amended to read:

21 **"72-1-303. Pleadings -- when orders or notice binding one binds another -- representation.** In
22 formal proceedings involving trusts or estates of decedents, minors, protected persons, or incapacitated persons
23 and in judicially supervised settlements, the following apply:

24 (1) Interests to be affected must be described in pleadings that give reasonable information to owners
25 by name or class, by reference to the instrument creating the interests, or in other appropriate manner.

26 (2) Persons are bound by orders binding others in the following cases:

27 (a) Orders binding the sole holder or all coholders of a power of revocation or a presently exercisable
28 general power of appointment, including one in the form of a power of amendment, bind other persons to the
29 extent their interests, as objects, takers in default, or otherwise, are subject to the power.

30 (b) (i) To the extent there is no conflict of interest between them or among persons represented, orders

1 binding a:

2 (A) conservator bind the person whose estate the conservator controls;

3 (B) guardian bind the ward if a conservator of the ward's estate has not been appointed;

4 (C) trustee bind beneficiaries of the trust in proceedings to probate a will establishing or adding to a trust,
5 to review the acts or accounts of a prior fiduciary, and in proceedings involving creditors or other third parties;

6 and

7 (D) personal representative bind persons interested in the undistributed assets of a decedent's estate
8 in actions or proceedings by or against the estate; and

9 (E) a sole holder or all co-holders of a general testamentary power of appointment binds other persons
10 to the extent their interests as objects, takers in default, or otherwise are subject to the power.

11 (ii) If there is no conflict of interest and a conservator or guardian has not been appointed, a parent may
12 represent the parent's minor child.

13 (c) An unborn or unascertained person who is not otherwise represented is bound by an order to the
14 extent the person's interest is adequately represented by another party having a substantially identical interest
15 in the proceeding.

16 (3) Notice is required as follows:

17 (a) Notice as prescribed by 72-1-301 must be given to every interested person or to one who can bind
18 an interested person as described in subsection (2)(a) or (2)(b). Notice may be given both to a person and to
19 another who may bind the person.

20 (b) Notice is given to unborn or unascertained persons, who are not represented under subsection (2)(a)
21 or (2)(b), by giving notice to all known persons whose interests in the proceedings are substantially identical to
22 those of the unborn or unascertained persons.

23 (4) At any point in a proceeding, a court may appoint a guardian ad litem to represent the interest of a
24 minor, an incapacitated, unborn, or unascertained person, or a person whose identity or address is unknown if
25 the court determines that representation of the interest otherwise would be inadequate. If not precluded by conflict
26 of interests, a guardian ad litem may be appointed to represent several persons or interests. The court shall set
27 out its reasons for appointing a guardian ad litem as a part of the record of the proceeding."
28

29 **Section 8.** Section 72-2-112, MCA, is amended to read:

30 **"72-2-112. Share of spouse.** The intestate share of a decedent's surviving spouse is:

(1) the entire intestate estate if:

(a) no descendant or parent of the decedent survives the decedent; or

(b) all of the decedent's surviving descendants are also descendants of the surviving spouse and there is no other descendant of the surviving spouse who survives the decedent;

(2) the first ~~\$200,000~~ \$300,000, plus three-fourths of any balance of the intestate estate, if no descendant of the decedent survives the decedent but a parent of the decedent survives the decedent;

(3) the first ~~\$150,000~~ \$225,000, plus one-half of any balance of the intestate estate, if all of the decedent's surviving descendants are also descendants of the surviving spouse and the surviving spouse has one or more surviving descendants who are not descendants of the decedent;

(4) the first ~~\$100,000~~ \$150,000, plus one-half of any balance of the intestate estate, if one or more of the decedent's surviving descendants are not descendants of the surviving spouse."

Section 9. Section 72-2-114, MCA, is amended to read:

"72-2-114. Requirement that heir survive decedent for 120 hours. An individual who fails to survive the decedent by 120 hours is ~~considered~~ deemed to have predeceased the decedent for purposes of homestead allowance, exempt property, and intestate succession, and the decedent's heirs are determined accordingly. If it is not established by clear and convincing evidence that an individual who would otherwise be an heir survived the decedent by 120 hours, it is ~~considered~~ deemed that the individual failed to survive for the required period. This section is not to be applied if its application would result in a taking of intestate estate by the state under 72-2-115."

Section 10. Section 72-2-116, MCA, is amended to read:

"72-2-116. Representation. (1) As used in this section, the following definitions apply:

(a) "Deceased descendant", "deceased parent", or "deceased grandparent" means a descendant, parent, or grandparent who either predeceased the decedent or is ~~considered~~ deemed to have predeceased the decedent under 72-2-114.

(b) "Surviving descendant" means a descendant who neither predeceased the decedent nor is ~~considered~~ deemed to have predeceased the decedent under 72-2-114.

(2) (a) If, under 72-2-113(1)(a), a decedent's intestate estate or a part of the intestate estate passes by representation to the decedent's descendants, the estate or part of the estate is divided into as many equal

1 shares as there are:

2 (i) surviving descendants in the generation nearest to the decedent that contains one or more surviving
3 descendants; and

4 (ii) deceased descendants in the same generation who left surviving descendants, if any.

5 (b) Each surviving descendant in the nearest generation is allocated one share. The share of each
6 deceased descendant in the same generation as the surviving descendant is divided in the same manner, with
7 the subdivision repeating at each succeeding generation until the property is fully allocated among surviving
8 descendants.

9 (3) (a) If, under 72-2-113(1)(c) or (1)(d), a decedent's intestate estate or a part of the intestate estate
10 passes by representation to the descendants of the decedent's deceased parents or either of them or to the
11 descendants of the decedent's deceased paternal or maternal grandparents or either of them, the estate or part
12 of the estate is divided into as many equal shares as there are:

13 (i) surviving descendants in the generation nearest the deceased parents or either of them or nearest
14 the deceased grandparents or either of them that contains one or more surviving descendants; and

15 (ii) deceased descendants in the same generation who left surviving descendants, if any.

16 (b) Each surviving descendant in the nearest generation is allocated one share. The share of each
17 deceased descendant in the same generation as the surviving descendant is divided in the same manner, with
18 the subdivision repeating at each succeeding generation until the property is fully allocated among surviving
19 descendants."
20

21 **Section 11.** Section 72-2-118, MCA, is amended to read:

22 **"72-2-118. Afterborn heirs.** An individual in gestation at a particular time is treated as living at that time
23 if the individual lives 120 hours or more after birth. If it is not established by clear and convincing evidence that
24 an individual in gestation at the decedent's death lived 120 hours after birth, it is deemed that the individual failed
25 to survive for the required period."
26

27 **NEW SECTION. Section 12. Parent barred from inheriting in certain circumstances.** (1) A parent
28 is barred from inheriting from or through a child of the parent if:

29 (a) the parent's parental rights were terminated and the parent-child relationship was not judicially
30 reestablished; or

(b) the child died before reaching 18 years of age and there is clear and convincing evidence that immediately before the child's death the parental rights of the parent could have been terminated under law of this state other than this code on the basis of nonsupport, abandonment, abuse, neglect, or other actions or inactions of the parent toward the child.

(2) For the purpose of intestate succession from or through the deceased child, a parent who is barred from inheriting under this section is treated as if the parent predeceased the child.

~~NEW SECTION. Section 13. Definitions. In [sections 13 through 19]:~~

~~(1) "Adoptee" means an individual who is adopted.~~

~~(2) "Assisted reproduction" means a method of causing pregnancy other than sexual intercourse.~~

~~(3) "Divorce" includes an annulment, dissolution, and declaration of invalidity of a marriage.~~

~~(4) "Functioned as a parent of the child" means behaving toward a child in a manner consistent with being the child's parent and performing functions that are customarily performed by a parent, including fulfilling parental responsibilities toward the child, recognizing or holding out the child as the individual's child, materially participating in the child's upbringing, and residing with the child in the same household as a regular member of that household.~~

~~(5) "Genetic father" means the man whose sperm fertilized the egg of a child's genetic mother. If the father-child relationship is established under the presumption of paternity under 40-6-105, the term means only the man for whom that relationship is established.~~

~~(6) "Genetic mother" means the woman whose egg was fertilized by the sperm of a child's genetic father.~~

~~(7) "Genetic parent" means a child's genetic father or genetic mother.~~

~~(8) "Incapacity" means the inability of an individual to function as a parent of a child because of the individual's physical or mental condition.~~

~~(9) "Relative" means a grandparent or a descendant of a grandparent.~~

~~NEW SECTION. Section 14. Effect of parent-child relationship. Except as otherwise provided in [section 17(2) through (5)], if a parent-child relationship exists or is established under [sections 13 through 19], the parent is a parent of the child and the child is a child of the parent for the purpose of intestate succession.~~

~~NEW SECTION. Section 15. No distinction based on marital status. Except as otherwise provided~~

1 in [sections 12, 17, 18, or 19], a parent-child relationship exists between a child and the child's genetic parents;
2 regardless of the parents' marital status.

3
4 ~~NEW SECTION. Section 16. Adoptee and adoptee's adoptive parent or parents.~~ (1) A parent-child
5 relationship exists between an adoptee and the adoptee's adoptive parent or parents:

6 ~~(2) For purposes of subsection (1):~~

7 ~~(a) an individual who is in the process of being adopted by a married couple when one of the spouses~~
8 ~~dies is treated as adopted by the deceased spouse if the adoption is subsequently granted to the decedent's~~
9 ~~surviving spouse; and~~

10 ~~(b) a child of a genetic parent who is in the process of being adopted by a genetic parent's spouse when~~
11 ~~the spouse dies is treated as adopted by the deceased spouse if the genetic parent survives the deceased~~
12 ~~spouse by 120 hours.~~

13 ~~(3) If, after a parent-child relationship is established between a child of assisted reproduction and a parent~~
14 ~~under [section 18] or between a gestational child and a parent under [section 19], the child is in the process of~~
15 ~~being adopted by the parent's spouse when that spouse dies, the child is treated as adopted by the deceased~~
16 ~~spouse for the purpose of subsection (2)(b).~~

17
18 ~~NEW SECTION. Section 17. Adoptee and adoptee's genetic parents.~~ (1) Except as otherwise
19 provided in subsections (2) through (5), a parent-child relationship does not exist between an adoptee and the
20 adoptee's genetic parents:

21 ~~(2) A parent-child relationship exists between an individual who is adopted by the spouse of either genetic~~
22 ~~parent and:~~

23 ~~(a) the genetic parent whose spouse adopted the individual; and~~

24 ~~(b) the other genetic parent, but only for the purpose of the right of the adoptee or a descendant of the~~
25 ~~adoptee to inherit from or through the other genetic parent.~~

26 ~~(3) A parent-child relationship exists between both genetic parents and an individual who is adopted by~~
27 ~~a relative of a genetic parent, or by the spouse or surviving spouse of a relative of a genetic parent, but only for~~
28 ~~the purpose of the right of the adoptee or a descendant of the adoptee to inherit from or through either genetic~~
29 ~~parent.~~

30 ~~(4) A parent-child relationship exists between both genetic parents and an individual who is adopted after~~

1 the death of both genetic parents, but only for the purpose of the right of the adoptee or a descendant of the
2 adoptee to inherit through either genetic parent.

3 ~~——— (5) If, after a parent-child relationship is established between a child of assisted reproduction and a parent
4 or parents under [section 18] or between a gestational child and a parent or parents under [section 19], the child
5 is adopted by another or others, the child's parent or parents under [sections 18 or 19] are treated as the child's
6 genetic parent or parents for the purpose of this section.~~

7
8 ~~——— NEW SECTION. Section 18. Child conceived by assisted reproduction other than child born to
9 gestational carrier. (1) In this section:~~

10 ~~——— (a) "Birth mother" means a woman, other than a gestational carrier under [section 19], who gives birth
11 to a child of assisted reproduction. The term is not limited to a woman who is the child's genetic mother.~~

12 ~~——— (b) "Child of assisted reproduction" means a child conceived by means of assisted reproduction by a
13 woman other than a gestational carrier under [section 19].~~

14 ~~——— (c) "Third-party donor" means an individual who produces eggs or sperm used for assisted reproduction,
15 whether or not for consideration. The term does not include:~~

16 ~~——— (i) a husband who provides sperm, or a wife who provides eggs, that are used for assisted reproduction
17 by the wife;~~

18 ~~——— (ii) the birth mother of a child of assisted reproduction; or~~

19 ~~——— (iii) an individual who has been determined under subsection (5) or (6) to have a parent-child relationship
20 with a child of assisted reproduction.~~

21 ~~——— (2) A parent-child relationship does not exist between a child of assisted reproduction and a third-party
22 donor.~~

23 ~~——— (3) A parent-child relationship exists between a child of assisted reproduction and the child's birth mother.~~

24 ~~——— (4) Except as otherwise provided in subsections (9) and (10), a parent-child relationship exists between
25 a child of assisted reproduction and the husband of the child's birth mother if the husband provided the sperm
26 that the birth mother used during his lifetime for assisted reproduction.~~

27 ~~——— (5) A birth certificate identifying an individual other than the birth mother as the other parent of a child of
28 assisted reproduction presumptively establishes a parent-child relationship between the child and that individual.~~

29 ~~——— (6) Except as otherwise provided in subsections (7), (9), and (10), and unless a parent-child relationship
30 is established under subsection (4) or (5), a parent-child relationship exists between a child of assisted~~

~~reproduction and an individual other than the birth mother who consented to assisted reproduction by the birth mother with intent to be treated as the other parent of the child. Consent to assisted reproduction by the birth mother with intent to be treated as the other parent of the child is established if the individual:~~

~~——— (a) before or after the child's birth, signed a record that, considering all the facts and circumstances, evidences the individual's consent; or~~

~~——— (b) in the absence of a signed record under subsection (6)(a):~~

~~——— (i) functioned as a parent of the child no later than 2 years after the child's birth;~~

~~——— (ii) intended to function as a parent of the child no later than 2 years after the child's birth but was prevented from carrying out that intent by death, incapacity, or other circumstances; or~~

~~——— (iii) intended to be treated as a parent of a posthumously conceived child, if that intent is established by clear and convincing evidence.~~

~~——— (7) For the purpose of subsection (6)(a), neither an individual who signed a record more than 2 years after the birth of the child, nor a relative of that individual who is not also a relative of the birth mother, inherits from or through the child unless the individual functioned as a parent of the child before the child reached 18 years of age.~~

~~——— (8) For the purpose of subsection (6)(b), the following rules apply:~~

~~——— (a) If the birth mother is married and no divorce proceeding is pending, in the absence of clear and convincing evidence to the contrary, her spouse satisfies subsection (6)(b)(i) or (ii).~~

~~——— (b) If the birth mother is a surviving spouse and at her deceased spouse's death no divorce proceeding was pending, in the absence of clear and convincing evidence to the contrary, her deceased spouse satisfies subsection (6)(b)(ii) or (iii).~~

~~——— (9) If a married couple is divorced before placement of eggs, sperm, or embryos, a child resulting from the assisted reproduction is not a child of the birth mother's former spouse, unless the former spouse consented in a record that if assisted reproduction were to occur after divorce, the child would be treated as the former spouse's child.~~

~~——— (10) If, in a record, an individual withdraws consent to assisted reproduction before placement of eggs, sperm, or embryos, a child resulting from the assisted reproduction is not a child of that individual, unless the individual subsequently satisfies subsection (6).~~

~~——— (11) If, under this section, an individual is a parent of a child of assisted reproduction who is conceived after the individual's death, the child is treated as in gestation at the individual's death for purposes of 72-2-118~~

1 if the child is:

2 ~~—— (a) in utero not later than 36 months after the individual's death; or~~

3 ~~—— (b) born not later than 45 months after the individual's death.~~

4
5 ~~—— **NEW SECTION. Section 19. Child born to gestational carrier.** (1) In this section:~~

6 ~~—— (a) "Gestational agreement" means an enforceable or unenforceable agreement for assisted reproduction~~
7 ~~in which a woman agrees to carry a child to birth for an intended parent, intended parents, or an individual~~
8 ~~described in subsection (5).~~

9 ~~—— (b) "Gestational carrier" means a woman who is not an intended parent who gives birth to a child under~~
10 ~~a gestational agreement. The term is not limited to a woman who is the child's genetic mother.~~

11 ~~—— (c) "Gestational child" means a child born to a gestational carrier under a gestational agreement.~~

12 ~~—— (d) "Intended parent" means an individual who entered into a gestational agreement providing that the~~
13 ~~individual will be the parent of a child born to a gestational carrier by means of assisted reproduction. The term~~
14 ~~is not limited to an individual who has a genetic relationship with the child.~~

15 ~~—— (2) A parent-child relationship is conclusively established by a court order designating the parent or~~
16 ~~parents of a gestational child.~~

17 ~~—— (3) A parent-child relationship between a gestational child and the child's gestational carrier does not exist~~
18 ~~unless the gestational carrier is:~~

19 ~~—— (a) designated as a parent of the child in a court order described in subsection (2); or~~

20 ~~—— (b) the child's genetic mother and a parent-child relationship does not exist under this section with an~~
21 ~~individual other than the gestational carrier.~~

22 ~~—— (4) In the absence of a court order under subsection (2), a parent-child relationship exists between a~~
23 ~~gestational child and an intended parent who:~~

24 ~~—— (a) functioned as a parent of the child no later than 2 years after the child's birth; or~~

25 ~~—— (b) died while the gestational carrier was pregnant if:~~

26 ~~—— (i) there were two intended parents and the other intended parent functioned as a parent of the child no~~
27 ~~later than 2 years after the child's birth;~~

28 ~~—— (ii) there were two intended parents, the other intended parent also died while the gestational carrier was~~
29 ~~pregnant, and a relative of either deceased intended parent or the spouse or surviving spouse of a relative of~~
30 ~~either deceased intended parent functioned as a parent of the child no later than 2 years after the child's birth;~~

1 or

2 ~~—— (iii) there was no other intended parent and a relative of or the spouse or surviving spouse of a relative~~
3 ~~of the deceased intended parent functioned as a parent of the child no later than 2 years after the child's birth.~~

4 ~~—— (5) In the absence of a court order under subsection (2), a parent-child relationship exists between a~~
5 ~~gestational child and an individual whose sperm or eggs were used after the individual's death or incapacity to~~
6 ~~conceive a child under a gestational agreement entered into after the individual's death or incapacity if the~~
7 ~~individual intended to be treated as the parent of the child. The individual's intent may be shown by:~~

8 ~~—— (a) a record signed by the individual which considering all the facts and circumstances evidences the~~
9 ~~individual's intent; or~~

10 ~~—— (b) other facts and circumstances establishing the individual's intent by clear and convincing evidence.~~

11 ~~—— (6) Except as otherwise provided in subsection (7), and unless there is clear and convincing evidence~~
12 ~~of a contrary intent, an individual is deemed to have intended to be treated as the parent of a gestational child~~
13 ~~for purposes of subsection (5)(b) if:~~

14 ~~—— (a) the individual, before death or incapacity, deposited the sperm or eggs that were used to conceive~~
15 ~~the child;~~

16 ~~—— (b) when the individual deposited the sperm or eggs, the individual was married and no divorce~~
17 ~~proceeding was pending; and~~

18 ~~—— (c) the individual's spouse or surviving spouse functioned as a parent of the child no later than 2 years~~
19 ~~after the child's birth.~~

20 ~~—— (7) The presumption under subsection (6) does not apply if there is:~~

21 ~~—— (a) a court order under subsection (2); or~~

22 ~~—— (b) a signed record that satisfies subsection (5)(a).~~

23 ~~—— (8) If, under this section, an individual is a parent of a gestational child who is conceived after the~~
24 ~~individual's death, the child is treated as in gestation at the individual's death for purposes of 72-2-118 if the child~~
25 ~~is:~~

26 ~~—— (a) in utero not later than 36 months after the individual's death; or~~

27 ~~—— (b) born not later than 45 months after the individual's death.~~

28 ~~—— (9) This section does not affect law of this state other than this code regarding the enforceability or validity~~
29 ~~of a gestational agreement.~~

1 **NEW SECTION. Section 13. Definitions.** In [sections ~~20 through 29~~ 13 THROUGH 22]:

2 (1) As used in sections other than [section ~~24~~ 17], "decedent's nonprobate transfers to others" means
3 the amounts that are included in the augmented estate under [section ~~24~~ 17].

4 (2) "Fractional interest in property held in joint tenancy with the right of survivorship," whether the
5 fractional interest is unilaterally severable or not, means the fraction, the numerator of which is one and the
6 denominator of which, if the decedent was a joint tenant, is one plus the number of joint tenants who survive the
7 decedent and which, if the decedent was not a joint tenant, is the number of joint tenants.

8 (3) "Marriage," as it relates to a transfer by the decedent during marriage, means any marriage of the
9 decedent to the decedent's surviving spouse.

10 (4) "Nonadverse party" means a person who does not have a substantial beneficial interest in the trust
11 or other property arrangement that would be adversely affected by the exercise or nonexercise of the power that
12 person possesses respecting the trust or other property arrangement. A person having a general power of
13 appointment over property is deemed to have a beneficial interest in the property.

14 (5) "Power" or "power of appointment" includes a power to designate the beneficiary of a beneficiary
15 designation.

16 (6) "Presently exercisable general power of appointment" means a power of appointment under which,
17 at the time in question, the decedent, whether or not the decedent then had the capacity to exercise the power,
18 held a power to create a present or future interest in the decedent, the decedent's creditors, the decedent's
19 estate, or creditors of the decedent's estate, and includes a power to revoke or invade the principal of a trust or
20 other property arrangement.

21 (7) "Property" includes values subject to a beneficiary designation.

22 (8) "Right to income" includes a right to payments under a commercial or private annuity, an annuity trust,
23 a unitrust, or a similar arrangement.

24 (9) "Transfer," as it relates to a transfer by or of the decedent, includes:

25 (a) an exercise or release of a presently exercisable general power of appointment held by the decedent;

26 (b) a lapse at death of a presently exercisable general power of appointment held by the decedent; and

27 (c) an exercise, release, or lapse of a general power of appointment that the decedent created in the
28 decedent and of a power described in [section ~~24(2)(b)~~ 17(2)(B)] that the decedent conferred on a nonadverse
29 party.

NEW SECTION. Section 14. Elective share. (1) The surviving spouse of a decedent who dies domiciled in this state has a right of election, under the limitations and conditions stated in [sections ~~20 through 29~~ 13 THROUGH 22], to take an elective-share amount equal to 50% of the value of the marital-property portion of the augmented estate.

(2) If the sum of the amounts described in [sections ~~26 and 28(1)(a)~~ 19 AND 21(1)(A)], and that part of the elective-share amount payable from the decedent's net probate estate and nonprobate transfers to others under [section ~~28(3) and (4)~~ 21(3) AND (4)] is less than \$75,000, the surviving spouse is entitled to a supplemental elective-share amount equal to \$75,000, minus the sum of the amounts described in those sections. The supplemental elective-share amount is payable from the decedent's net probate estate and from recipients of the decedent's nonprobate transfers to others in the order of priority set forth in [section ~~28(3) and (4)~~ 21(3) AND (4)].

(3) If the right of election is exercised by or on behalf of the surviving spouse, the surviving spouse's homestead allowance, exempt property, and family allowance, if any, are not charged against but are in addition to the elective-share and supplemental elective-share amounts.

(4) The right, if any, of the surviving spouse of a decedent who dies domiciled outside this state to take an elective share in property in this state is governed by the law of the decedent's domicile at death.

NEW SECTION. Section 15. Composition of the augmented estate. (1) Subject to [section ~~27~~ 20], the value of the augmented estate, to the extent provided in [sections ~~23, 24, 25, and 26~~ 16, 17, 18, AND 19], consists of the sum of the values of all property, whether real or personal; movable or immovable, tangible or intangible, wherever situated, that constitute:

- (a) the decedent's net probate estate;
- (b) the decedent's nonprobate transfers to others;
- (c) the decedent's nonprobate transfers to the surviving spouse; and
- (d) the surviving spouse's property and nonprobate transfers to others.

(2) The value of the marital-property portion of the augmented estate consists of the sum of the values of the four components of the augmented estate as determined under subsection (1) multiplied by the following percentage:

If the decedent and the spouse	The percentage is:
were married to each other:	
Less than 1 year	3%

1	1 year but less than 2 years	6%
2	2 years but less than 3 years	12%
3	3 years but less than 4 years	18%
4	4 years but less than 5 years	24%
5	5 years but less than 6 years	30%
6	6 years but less than 7 years	36%
7	7 years but less than 8 years	42%
8	8 years but less than 9 years	48%
9	9 years but less than 10 years	54%
10	10 years but less than 11 years	60%
11	11 years but less than 12 years	68%
12	12 years but less than 13 years	76%
13	13 years but less than 14 years	84%
14	14 years but less than 15 years	92%
15	15 years or more	100%

16

17 **NEW SECTION. Section 16. Decedent's net probate estate.** The value of the augmented estate
 18 includes the value of the decedent's probate estate, reduced by funeral and administration expenses, homestead
 19 allowance, family allowances, exempt property, and enforceable claims.

20

21 **NEW SECTION. Section 17. Decedents's nonprobate transfers to others.** The value of the
 22 augmented estate includes the value of the decedent's nonprobate transfers to others, not included under [section
 23 ~~23~~ 16], of any of the following types, in the amount provided respectively for each type of transfer:

24 (1) Property owned or owned in substance by the decedent immediately before death that passed outside
 25 probate at the decedent's death. Property included under this category consists of:

26 (a) Property over which the decedent alone, immediately before death, held a presently exercisable
 27 general power of appointment. The amount included is the value of the property subject to the power, to the
 28 extent the property passed at the decedent's death, by exercise, release, lapse, in default, or otherwise, to or for
 29 the benefit of any person other than the decedent's estate or surviving spouse.

30 (b) The decedent's fractional interest in property held by the decedent in joint tenancy with the right of

1 survivorship. The amount included is the value of the decedent's fractional interest, to the extent the fractional
2 interest passed by right of survivorship at the decedent's death to a surviving joint tenant other than the
3 decedent's surviving spouse.

4 (c) The decedent's ownership interest in property or accounts held in POD, TOD, or co-ownership
5 registration with the right of survivorship. The amount included is the value of the decedent's ownership interest,
6 to the extent the decedent's ownership interest passed at the decedent's death to or for the benefit of any person
7 other than the decedent's estate or surviving spouse.

8 (2) Property transferred in any of the following forms by the decedent during marriage:

9 (a) Any irrevocable transfer in which the decedent retained the right to the possession or enjoyment of,
10 or to the income from, the property if and to the extent the decedent's right terminated at or continued beyond
11 the decedent's death. The amount included is the value of the fraction of the property to which the decedent's
12 right related, to the extent the fraction of the property passed outside probate to or for the benefit of any person
13 other than the decedent's estate or surviving spouse.

14 (b) Any transfer in which the decedent created a power over income or property, exercisable by the
15 decedent alone or in conjunction with any other person, or exercisable by a nonadverse party, to or for the benefit
16 of the decedent, creditors of the decedent, the decedent's estate, or creditors of the decedent's estate. The
17 amount included with respect to a power over property is the value of the property subject to the power, and the
18 amount included with respect to a power over income is the value of the property that produces or produced the
19 income, to the extent the power in either case was exercisable at the decedent's death to or for the benefit of any
20 person other than the decedent's surviving spouse or to the extent the property passed at the decedent's death,
21 by exercise, release, lapse, in default, or otherwise, to or for the benefit of any person other than the decedent's
22 estate or surviving spouse. If the power is a power over both income and property and the preceding sentence
23 produces different amounts, the amount included is the greater amount.

24 (3) Property that passed during marriage and during the 2 year period next preceding the decedent's
25 death as a result of a transfer by the decedent if the transfer was of any of the following types:

26 (a) Any property that passed as a result of the termination of a right or interest in, or power over, property
27 that would have been included in the augmented estate under subsection (1)(a), (1)(b), or (1)(c), or under
28 subsection (2), if the right, interest, or power had not terminated until the decedent's death. The amount included
29 is the value of the property that would have been included under those subsections if the property were valued
30 at the time the right, interest, or power terminated, and is included only to the extent the property passed upon

1 termination to or for the benefit of any person other than the decedent or the decedent's estate, spouse, or
2 surviving spouse. As used in this subsection (3)(a), "termination," with respect to a right or interest in property,
3 occurs when the right or interest terminated by the terms of the governing instrument or the decedent transferred
4 or relinquished the right or interest, and, with respect to a power over property, occurs when the power terminated
5 by exercise, release, lapse, default, or otherwise, but, with respect to a power described in subsection (1)(a),
6 "termination" occurs when the power terminated by exercise or release, but not otherwise.

7 (b) Any transfer of property, to the extent not otherwise included in the augmented estate, made to or for
8 the benefit of a person other than the decedent's surviving spouse. The amount included is the value of the
9 transferred property to the extent the transfers to any one donee in either of the 2 years exceeded the amount
10 excludable from taxable gifts under 26 U.S.C. 2503(b) or its successor on the date next preceding the date of the
11 decedent's death.

12
13 **NEW SECTION. Section 18. Decedent's nonprobate transfers to surviving spouse.** Excluding
14 property passing to the surviving spouse under the federal social security system, the value of the augmented
15 estate includes the value of the decedent's nonprobate transfers to the decedent's surviving spouse, which
16 consist of all property that passed outside probate at the decedent's death from the decedent to the surviving
17 spouse by reason of the decedent's death, including:

18 (1) the decedent's fractional interest in property held as a joint tenant with the right of survivorship, to the
19 extent that the decedent's fractional interest passed to the surviving spouse as surviving joint tenant;

20 (2) the decedent's ownership interest in property or accounts held in co-ownership registration with the
21 right of survivorship, to the extent the decedent's ownership interest passed to the surviving spouse as surviving
22 co-owner; and

23 (3) all other property that would have been included in the augmented estate under [section ~~24(1) or (2)~~
24 17(1) OR (2)] had it passed to or for the benefit of a person other than the decedent's spouse, surviving spouse,
25 the decedent, or the decedent's creditors, estate, or estate creditors.

26
27 **NEW SECTION. Section 19. Surviving spouse's property and nonprobate transfers to others.** (1)
28 Except to the extent included in the augmented estate under [sections ~~23 or 25~~ 16 OR 18], the value of the
29 augmented estate includes the value of:

30 (a) property that was owned by the decedent's surviving spouse at the decedent's death, including:

(i) the surviving spouse's fractional interest in property held in joint tenancy with the right of survivorship;
(ii) the surviving spouse's ownership interest in property or accounts held in co-ownership registration with the right of survivorship; and

(iii) property that passed to the surviving spouse by reason of the decedent's death, but not including the spouse's right to homestead allowance, family allowance, exempt property, or payments under the federal social security system; and

(b) property that would have been included in the surviving spouse's nonprobate transfers to others, other than the spouse's fractional and ownership interests included under subsection (1)(a)(i) or (1)(a)(ii), had the spouse been the decedent.

(2) Property included under this section is valued at the decedent's death, taking the fact that the decedent predeceased the spouse into account, but, for purposes of subsection (1)(a)(i) and (1)(a)(ii), the values of the spouse's fractional and ownership interests are determined immediately before the decedent's death if the decedent was then a joint tenant or a co-owner of the property or accounts.

(3) The value of property included under this section is reduced by enforceable claims against the surviving spouse.

NEW SECTION. Section 20. Exclusions, valuation, and overlapping application. (1) The value of any property is excluded from the decedent's nonprobate transfers to others:

(a) to the extent the decedent received adequate and full consideration in money or money's worth for a transfer of the property;

(b) if the property was transferred with the written joinder of, or if the transfer was consented to in writing before or after the transfer by, the surviving spouse; or

(c) if the property is life insurance or accident insurance payable to persons other than the decedent's surviving spouse or the decedent's estate.

(2) The value of property:

(a) included in the augmented estate under [sections ~~24, 25, or 26~~ 17, 18, OR 19] is reduced in each category by enforceable claims against the included property; and

(b) includes the commuted value of any present or future interest and the commuted value of amounts payable under any trust, life insurance settlement option, annuity contract, public or private pension, disability compensation, death benefit or retirement plan, or any similar arrangement, exclusive of the federal social

1 security system. The commuted value of life and term interests in income, annuity, or unitrust amount must be
2 determined in accordance with U.S. treasury regulations for internal revenue purposes in effect at the time of the
3 decedent's death.

4 (3) In case of overlapping application to the same property of [~~sections 24, 25, or 26~~ 17, 18, OR 19], the
5 property is included in the augmented estate under the provision yielding the greatest value, and under only one
6 overlapping provision if they all yield the same value.

7
8 **NEW SECTION. Section 21. Sources from which elective share payable.** (1) In a proceeding for an
9 elective share, the following are applied first to satisfy the elective-share amount and to reduce or eliminate any
10 contributions due from the decedent's probate estate and recipients of the decedent's nonprobate transfers to
11 others:

12 (a) amounts included in the augmented estate under [~~section 23~~ 16] which pass or have passed to the
13 surviving spouse by testate or intestate succession and amounts included in the augmented estate under [~~section~~
14 25 18];

15 (b) amounts included in the augmented estate that would have passed to the spouse but were
16 disclaimed; and

17 (c) the marital-property portion of amounts included in the augmented estate under [~~section 26~~ 19].

18 (2) The marital-property portion under subsection (1)(b) is computed by multiplying the value of the
19 amounts included in the augmented estate under [~~section 26~~ 19] by the percentage of the augmented estate set
20 forth in the schedule in [~~section 22(2)~~ 15(2)] appropriate to the length of time the spouse and the decedent were
21 married to each other.

22 (3) If, after the application of subsection (1), the elective-share amount is not fully satisfied, or the
23 surviving spouse is entitled to a supplemental elective-share amount, amounts included in the decedent's net
24 probate estate, other than assets passing to the surviving spouse by testate or intestate succession, and in the
25 decedent's nonprobate transfers to others under [~~section 24(1) and (2)~~ 17(1) AND (2)] are applied first to satisfy
26 the unsatisfied balance of the elective-share amount or the supplemental elective-share amount. The decedent's
27 net probate estate and that portion of the decedent's nonprobate transfers to others are so applied that liability
28 for the unsatisfied balance of the elective-share amount or for the supplemental elective-
29 share amount is apportioned among the recipients of the decedent's net probate estate and of that portion of the
30 decedent's nonprobate transfers to others in proportion to the value of their interests.

(4) If, after the application of subsections (1) and (3), the elective-share or supplemental elective-share amount is not fully satisfied, the remaining portion of the decedent's nonprobate transfers to others is so applied that liability for the unsatisfied balance of the elective-share or supplemental elective-share amount is apportioned among the recipients of the remaining portion of the decedent's nonprobate transfers to others in proportion to the value of their interests therein.

(5) The unsatisfied balance of the elective-share or supplemental elective-share amount as determined under subsection (3) or (4) is treated as a general pecuniary devise for purposes of 72-3-913.

NEW SECTION. Section 22. Effect of premarital or marital agreement right to elect and of other rights. (1) In this section, "agreement" includes a subsequent agreement that affirms, modifies, or waives an earlier agreement.

(2) The right of election of a surviving spouse and the rights of the surviving spouse to homestead allowance, exempt property, and family allowance, or any of them, may be affirmed, modified, or waived wholly or partially, only by a written agreement signed by the surviving spouse, before or after the marriage. The agreement is enforceable without consideration.

(3) An agreement under subsection (2) is not enforceable if the surviving spouse proves that:

(a) the agreement was involuntary or the result of duress;

(b) the surviving spouse did not have access to independent legal representation under subsection (4);

(c) unless the surviving spouse had independent legal representation when the agreement was executed, the agreement did not include an explanation in plain language of the rights under subsection (2) being affirmed, modified, or waived; or

(d) before signing the agreement, the surviving spouse did not receive adequate financial disclosure under subsection (5).

(4) A surviving spouse had access to independent legal representation if:

(a) before signing an agreement, the surviving spouse had a reasonable time to:

(i) decide whether to retain a lawyer to provide independent legal representation; and

(ii) locate a lawyer to provide independent legal representation, obtain the lawyer's advice, and consider the advice provided; and

(b) the other spouse was represented by a lawyer and the surviving spouse had the financial ability to retain a lawyer or the other spouse agreed to pay the reasonable fees and expenses of independent legal

1 representation.

2 (5) A surviving spouse had adequate financial disclosure under this section if the surviving spouse:

3 (a) received a reasonably accurate description and good-faith estimate of the value of the property,
4 liabilities, and income of the other spouse;

5 (b) expressly waived, in a separate signed record, the right to financial disclosure beyond the disclosure
6 provided; or

7 (c) had adequate knowledge or a reasonable basis for having adequate knowledge of the information
8 described in subsection (5)(a).

9 (6) Unless an agreement under subsection (2) provides to the contrary, a waiver of "all rights," or
10 equivalent language, in the property or estate of a present or prospective spouse or a complete property
11 settlement entered into after or in anticipation of separation or divorce is a waiver of all rights of elective share,
12 homestead allowance, exempt property, and family allowance by the spouse in the property of the other spouse
13 and a renunciation of all benefits that would otherwise pass to the renouncing spouse by intestate succession
14 or by virtue of any will executed before the waiver or property settlement.

15
16 **Section 23.** Section 72-2-223, MCA, is amended to read:

17 **"72-2-223. Right of election personal to surviving spouse -- incapacitated surviving spouse. (1)**

18 The right of election may be exercised only by a surviving spouse who is living when the petition for the elective
19 share is filed in the court under 72-2-225(1). If the election is not exercised by the surviving spouse personally,
20 it may be exercised on the surviving spouse's behalf by the surviving spouse's conservator, guardian, or agent
21 under the authority of a power of attorney.

22 (2) If the election is exercised on behalf of a surviving spouse who is an incapacitated person, the court
23 shall set aside that portion of the elective-share and supplemental elective-share amounts due from the
24 decedent's probate estate and recipients of the decedent's nonprobate transfers to others under ~~72-2-227(2) and~~
25 ~~(3) [section 28(3) and (4) 21(3) AND (4)]~~ and shall appoint a trustee to administer that property for the support of
26 the surviving spouse. For the purposes of this subsection, an election on behalf of a surviving spouse by an agent
27 under a durable power of attorney is presumed to be on behalf of a surviving spouse who is an incapacitated
28 person. The trustee shall administer the trust in accordance with the following terms and such additional terms
29 as the court determines appropriate:

30 (a) Expenditures of income and principal may be made in the manner, when, and to the extent that the

1 trustee determines suitable and proper for the surviving spouse's support, without court order but with regard to
2 other support, income, and property of the surviving spouse exclusive of benefits of medical or other forms of
3 assistance from any state or federal government or governmental agency for which the surviving spouse qualifies
4 on the basis of need.

5 (b) During the surviving spouse's incapacity, neither the surviving spouse nor anyone acting on behalf
6 of the surviving spouse has a power to terminate the trust; but if the surviving spouse regains capacity, the
7 surviving spouse then acquires the power to terminate the trust and acquire full ownership of the trust property
8 free of trust by delivering to the trustee a writing signed by the surviving spouse declaring the termination.

9 (c) Upon the surviving spouse's death, the trustee shall transfer the unexpended trust property in the
10 following order:

11 (i) under the residuary clause, if any, of the will of the predeceased spouse against whom the elective
12 share was taken, as if that predeceased spouse died immediately after the surviving spouse; or

13 (ii) to that predeceased spouse's heirs under 72-2-721."
14

15 **Section 24.** Section 72-2-225, MCA, is amended to read:

16 **"72-2-225. Proceeding for elective share -- time limit.** (1) Except as provided in subsection (2), the
17 election must be made by filing in the court and mailing or delivering to the personal representative, if any, a
18 petition for the elective share within 9 months after the date of the decedent's death or within 6 months after the
19 probate of the decedent's will, whichever limitation later expires. The surviving spouse shall give notice of the time
20 and place set for hearing to persons interested in the estate and to the distributees and recipients of portions of
21 the augmented estate whose interests will be adversely affected by the taking of the elective share. Except as
22 provided in subsection (2), the decedent's nonprobate transfers to others described in ~~72-2-222(2)(b)~~ [section
23 24 17], is not included within the augmented estate for the purpose of computing the elective share if the petition
24 is filed more than 9 months after the decedent's death.

25 (2) Within 9 months after the decedent's death, the surviving spouse may petition the court for an
26 extension of time for making an election. If, within 9 months after the decedent's death, the spouse gives notice
27 of the petition to all persons interested in the decedent's nonprobate transfers to others the court for cause shown
28 by the surviving spouse may extend the time for election. If the court grants the spouse's petition for an extension,
29 the decedent's nonprobate transfers to others described in ~~72-2-222(2)(b)~~ [section 24 17], is not excluded from
30 the augmented estate for the purpose of computing the elective-share and supplemental elective-share amounts

1 if the spouse makes an election by filing in the court and mailing or delivering to the personal representative, if
2 any, a petition for the elective share within the time allowed by the extension.

3 (3) The surviving spouse may withdraw a demand for an elective share at any time before entry of a final
4 determination by the court.

5 (4) After notice and hearing, the court shall determine the elective-share and supplemental elective-share
6 amounts and shall order its payment from the assets of the augmented estate or by contribution as appears
7 appropriate under ~~72-2-227~~ [section 28 21]. If it appears that a fund or property included in the augmented estate
8 has not come into the possession of the personal representative or has been distributed by the personal
9 representative, the court nevertheless shall fix the liability of any person who has any interest in the fund or
10 property or who has possession thereof, whether as trustee or otherwise. The proceeding may be maintained
11 against fewer than all persons against whom relief could be sought, but no person is subject to contribution in
12 any greater amount than the person would have been under ~~72-2-227~~ [section 28 21] if relief had been secured
13 against all persons subject to contribution.

14 (5) The order or judgment of the court may be enforced as necessary in suit for contribution or payment
15 in other courts of this state or other jurisdictions."
16

17 **Section 25.** Section 72-2-228, MCA, is amended to read:

18 **"72-2-228. Protection of payors and other third parties.** (1) Although under ~~72-2-222~~ [section 24 17]
19 a payment, item of property, or other benefit is included in the decedent's nonprobate transfers to others, a payor
20 or other third party is not liable for having made a payment or transferred an item of property or other benefit to
21 a beneficiary designated in a governing instrument or for having taken any other action in good faith reliance on
22 the validity of a governing instrument, upon request and satisfactory proof of the decedent's death, before the
23 payor or other third party received written notice from the surviving spouse or spouse's representative of an
24 intention to file a petition for the elective share or that a petition for the elective share has been filed. A payor or
25 other third party is liable only for actions taken 2 or more business days after the payor or other third party
26 received written notice of an intention to file a petition for the elective share or that a petition for the elective share
27 has been filed. The written notice must indicate the name of the decedent, the date of the decedent's death, the
28 name of the person asserting an interest, the nature of the payment or item of property or other benefit, and a
29 statement that the spouse intends to file a petition for the elective share or that a petition for the elective share
30 has been filed. Any form of service of notice other than that described in subsection (2) is not sufficient to impose

1 liability on a payor or other third party for actions taken pursuant to the governing instrument.

2 (2) The written notice must be mailed to the payor's or other third party's main office or home by
3 registered or certified mail, return receipt requested, or served upon the payor or other third party in the same
4 manner as a summons in a civil action. Notice to a sales representative of the payor or other third party does not
5 constitute notice to the payor or other third party. Upon receipt of written notice of intention to file a petition for
6 the elective share or that a petition for the elective share has been filed, a payor or other third party may pay any
7 amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the
8 probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the
9 court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the
10 decedent's residence. The availability of an action under this section does not prevent the payor or other third
11 party from taking any other action authorized by law or the governing instrument. If probate proceedings have
12 not been commenced, the payor or other third party shall file with the court a copy of the written notice received
13 by the payor or other third party, with the payment of funds or transfer or deposit of property. The court may not
14 charge a filing fee to the payor or other third party for the payment, transfer, or deposit. The court shall hold the
15 funds or item of property and, upon its determination under 72-2-225(4), shall order disbursement in accordance
16 with the determination. If no petition is filed in the court within the specified time under 72-2-225(1) or, if filed, the
17 demand for an elective share is withdrawn under 72-2-225(3), the court shall order disbursement to the
18 designated beneficiary. A filing fee, if any, may, in the discretion of the court, be charged upon disbursement
19 either to the recipient or against the funds or property on deposit with the court. Payments, transfers, or deposits
20 made to or with the court discharge the payor or other third party from all claims under the governing instrument
21 or applicable law for the value of amounts paid to or items of property transferred to or deposited with the court.

22 (3) Upon petition to the probate court by the beneficiary designated in a governing instrument, the court
23 may order that all or part of the property be paid to the beneficiary in an amount and subject to conditions
24 consistent with this section."

25
26 **Section 26.** Section 72-2-230, MCA, is amended to read:

27 **"72-2-230. Personal liability of recipients.** (1) Only original recipients of the decedent's nonprobate
28 transfers to others, and the donees of the recipients of the decedent's nonprobate transfers to others, to the
29 extent the donees have the property or its proceeds, are liable to make a proportional contribution toward
30 satisfaction of the surviving spouse's elective-share or supplemental elective-share amount. A person liable to

1 make contribution may choose to give up the proportional part of the decedent's nonprobate transfers to the
2 person or to pay the value of the amount for which the person is liable.

3 (2) If any section or part of any section of this part is preempted by federal law with respect to a payment,
4 an item of property, or any other benefit included in the decedent's nonprobate transfers to others, a person who,
5 not for value, receives the payment, item of property, or other benefit is obligated to return that payment, item of
6 property, or benefit or is personally liable for the amount of that payment or the value of that item of property or
7 benefit, as provided in ~~72-2-227~~ [section 28 21], to the person who would have been entitled to it were that
8 section or part of that section not preempted."

9
10 **Section 27.** Section 72-2-412, MCA, is amended to read:

11 **"72-2-412. Homestead allowance.** A decedent's surviving spouse is entitled to a homestead allowance
12 of ~~\$20,000~~ \$22,500. If there is no surviving spouse, each minor child and each dependent child of the decedent
13 is entitled to a homestead allowance amounting to ~~\$20,000~~ \$22,500 divided by the number of minor and
14 dependent children of the decedent. The homestead allowance is exempt from and has priority over all claims
15 against the estate. Homestead allowance is in addition to any share passing to the surviving spouse or minor or
16 dependent child by the will of the decedent unless otherwise provided, by intestate succession, or by way of
17 elective share."

18
19 **Section 28.** Section 72-2-413, MCA, is amended to read:

20 **"72-2-413. Exempt property.** In addition to the homestead allowance, the decedent's surviving spouse
21 is entitled from the estate to a value, not exceeding ~~\$40,000~~ \$15,000 in excess of any security interests therein,
22 in household furniture, automobiles, furnishings, appliances, and personal effects. If there is no surviving spouse,
23 the decedent's children are entitled jointly to the same value. If encumbered chattels are selected and if the value
24 in excess of security interests, plus that of other exempt property, is less than ~~\$40,000~~ \$15,000 or if there is not
25 ~~\$40,000~~ \$15,000 worth of exempt property in the estate, the spouse or children are entitled to other assets of the
26 estate, if any, to the extent necessary to make up the ~~\$40,000~~ \$15,000 value. Rights to exempt property and
27 assets needed to make up a deficiency of exempt property have priority over all claims against the estate, but
28 the right to any assets to make up a deficiency of exempt property abates as necessary to permit earlier payment
29 of homestead allowance and family allowance. These rights are in addition to any benefit or share passing to the
30 surviving spouse or children by the decedent's will unless otherwise provided, by intestate succession, or by way

1 of elective share."

2
3 **Section 29.** Section 72-2-415, MCA, is amended to read:

4 **"72-2-415. Source, determination, and documentation.** (1) If the estate is otherwise sufficient,
5 property specifically devised may not be used to satisfy rights to homestead allowance or exempt property.
6 Subject to this restriction, the surviving spouse, guardians of minor children, or children who are adults may select
7 property of the estate as homestead allowance and exempt property. The personal representative may make
8 those selections if the surviving spouse, the children, or the guardians of the minor children are unable or fail to
9 do so within a reasonable time or if there is no guardian of a minor child. The personal representative may
10 execute an instrument or deed of distribution to establish the ownership of property taken as homestead
11 allowance or exempt property. The personal representative may determine the family allowance in a lump sum
12 not exceeding ~~\$18,000~~ \$27,000 or periodic installments not exceeding ~~\$1,500~~ \$2,250 per month for 1 year and
13 may disburse funds of the estate in payment of the family allowance and any part of the homestead allowance
14 payable in cash. The personal representative or any interested person aggrieved by any selection, determination,
15 payment, proposed payment, or failure to act under this section may petition the court for appropriate relief, which
16 may include a family allowance other than that which the personal representative determined or could have
17 determined.

18 (2) If the right to an elective share is exercised on behalf of a surviving spouse who is an incapacitated
19 person, the personal representative may add any unexpended portions payable under the homestead allowance,
20 exempt property, and family allowance to the trust established under 72-2-223(2)."

21
22 **Section 30.** Section 72-2-613, MCA, is amended to read:

23 **"72-2-613. Antilapse -- deceased devisee -- class gifts.** (1) As used in this section, the following
24 definitions apply:

25 (a) "Alternative devise" means a devise that is expressly created by the will and that under the terms of
26 the will may take effect instead of another devise on the happening of one or more events, including survival of
27 the testator or failure to survive the testator, whether an event is expressed in condition-precedent,
28 condition-subsequent, or any other form. A residuary clause constitutes an alternative devise with respect to a
29 nonresiduary devise only if the will specifically provides that, upon lapse or failure, the nonresiduary devise or
30 nonresiduary devises in general pass under the residuary clause.

(b) "Class member" includes an individual who fails to survive the testator but who would have taken under a devise in the form of a class gift had the individual survived the testator.

(c) "Descendant of a grandparent", as used in subsection (2), means an individual who qualifies as a descendant of a grandparent of the testator or of the donor of a power of appointment under the:

(i) rules of construction applicable to a class gift created in the testator's will if the devise or exercise of the power is in the form of a class gift; or

(ii) rules for intestate succession if the devise or exercise of the power is not in the form of a class gift.

(d) "Descendants", as used in the phrase "surviving descendants" of a deceased devisee or class member in subsections (2)(a) and (2)(b), mean the descendants of a deceased devisee or class member who would take under a class gift created in the testator's will.

~~(e)~~(e) "Devise" includes an alternative devise, a devise in the form of a class gift, and an exercise of a power of appointment.

~~(d)~~(f) "Devisee" includes:

(i) a class member if the devise is in the form of a class gift;

(ii) an individual or class member who was deceased at the time the testator executed the testator's will as well as an individual or class member who was then living but who failed to survive the testator; and

(iii) an appointee under a power of appointment exercised by the testator's will.

~~(e)~~(g) "Stepchild" means a child of the surviving, deceased, or former spouse of the testator or of the donor of a power of appointment but not a child of the testator or donor.

~~(f)~~(h) "Surviving devisee", or in the phrase "surviving descendant devisees" or "surviving descendants" means ~~a devisee or a descendant~~ devisees or descendants who neither predeceased the testator nor is ~~considered~~ deemed to have predeceased the testator under 72-2-712.

~~(g)~~(i) "Testator" includes the donee of a power of appointment if the power is exercised in the testator's will.

(2) If a devisee fails to survive the testator and is a grandparent, a descendant of a grandparent, or a stepchild of either the testator or the donor of a power of appointment exercised by the testator's will, the following apply:

(a) Except as provided in subsection (2)(d), if the devise is not in the form of a class gift and the deceased devisee leaves surviving descendants, a substitute gift is created in the devisee's surviving descendants. They take by representation the property to which the devisee would have been entitled had the

1 devisee survived the testator.

2 (b) Except as provided in subsection (2)(d), if the devise is in the form of a class gift, other than a devise
3 to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives", or "family" or a class described by
4 language of similar import, a substitute gift is created in the surviving descendants of any deceased devisee. The
5 property to which the devisees would have been entitled had all of them survived the testator passes to the
6 surviving devisees and the surviving descendants of the deceased devisees. Each surviving devisee takes the
7 share to which the devisee would have been entitled had the deceased devisees survived the testator. Each
8 deceased devisee's surviving descendants who are substituted for the deceased devisee take by representation
9 the share to which the deceased devisee would have been entitled had the deceased devisee survived the
10 testator. For purposes of this ~~subsection (b)~~ section, "deceased devisee" means a class member who failed to
11 survive the testator and left one or more surviving descendants.

12 (c) For purposes of 72-2-611, words of survivorship, such as in a devise to an individual "if the individual
13 survives me" or in a devise to "my surviving children", are not, in the absence of additional evidence, a sufficient
14 indication of an intent contrary to the application of this section.

15 (d) If the will creates an alternative devise with respect to a devise for which a substitute gift is created
16 by subsection (2)(a) or (2)(b), the substitute gift is superseded by the alternative devise ~~only if an expressly~~
17 ~~designated devisee of the alternative devise is entitled to take under the will. if:~~

18 (i) the alternative devise is in the form of a class gift and one or more members of the class is entitled to
19 take under the will; or

20 (ii) the alternative devise is not in the form of a class gift and the expressly designated devisee of the
21 alternative devise is entitled to take under the will.

22 (e) Unless the language creating a power of appointment expressly excludes the substitution of the
23 descendants of an appointee for the appointee, a surviving descendant of a deceased appointee of a power of
24 appointment may be substituted for the appointee under this section, whether or not the descendant is an object
25 of the power.

26 (3) If, under subsection (2), substitute gifts are created and not superseded with respect to more than
27 one devise and the devises are alternative devises, one to the other, the determination of which of the substitute
28 gifts takes effect is resolved as follows:

29 (a) Except as provided in subsection (3)(b), the devised property passes under the primary substitute
30 gift.

(b) If there is a younger-generation devise, the devised property passes under the younger-generation substitute gift and not under the primary substitute gift.

(c) As used in this subsection (3), the following definitions apply:

(i) "Primary devise" means the devise that would have taken effect had all the deceased devisees of the alternative devises who left surviving descendants survived the testator.

(ii) "Primary substitute gift" means the substitute gift created with respect to the primary devise.

(iii) "Younger-generation devise" means a devise that:

(A) is to a descendant of a devisee of the primary devise;

(B) is an alternative devise with respect to the primary devise;

(C) is a devise for which a substitute gift is created; and

(D) would have taken effect had all the deceased devisees who left surviving descendants survived the testator except the deceased devisee or devisees of the primary devise.

(iv) "Younger-generation substitute gift" means the substitute gift created with respect to the younger-generation devise."

Section 31. Section 72-2-616, MCA, is amended to read:

"72-2-616. Nonademption of specific devises -- unpaid proceeds of sale, condemnation, or insurance -- sale by conservator or agent. (1) A specific devisee has the right to the specifically devised property in the testator's estate at death and:

(a) any balance of the purchase price, together with any security interest, owing from a purchaser to the testator at death by reason of sale of the property;

(b) any amount of a condemnation award for the taking of the property unpaid at death;

(c) any proceeds unpaid at death on fire or casualty insurance on or other recovery for injury to the property;

(d) property owned by the testator at death and acquired as a result of foreclosure or obtained in lieu of foreclosure of the security interest for a specifically devised obligation;

(e) real or tangible personal property owned by the testator at death that the testator acquired as a replacement for specifically devised real or tangible personal property; and

~~(f) unless the facts and circumstances indicate that ademption of the devise was intended by the testator or ademption of the devise is consistent with the testator's manifested plan of distribution, the value of the~~

specifically devised property to the extent the specifically devised property is not in the testator's estate at death and its value or its replacement is not covered by subsections (1)(a) through (1)(e).

(f) if not covered by subsections (1)(a) through (1)(e), a pecuniary devise equal to the value as of its date of disposition of other specifically devised property disposed of during the testator's lifetime but only to the extent it is established that ademption would be inconsistent with the testator's manifested plan of distribution or that at the time the will was made, the date of disposition or otherwise, the testator did not intend ademption of the devise.

(2) If specifically devised property is sold or mortgaged by a conservator or an agent acting within the authority of a durable power of attorney for an incapacitated principal or if a condemnation award, insurance proceeds, or recovery for an injury to property is paid to a conservator or an agent acting within the authority of a durable power of attorney for an incapacitated principal, the specific devisee has the right to a general pecuniary devise equal to the net sale price, the amount of the unpaid loan, the condemnation award, the insurance proceeds, or the recovery.

(3) The right of the specific devisee under subsection (2) is reduced by any right the devisee has under subsection (1).

(4) For the purposes of the references in subsection (2) to a conservator, subsection (2) does not apply if, after the sale, mortgage, condemnation, casualty, or recovery, it was adjudicated that the testator's incapacity ceased and the testator survived the adjudication by 1 year.

(5) For the purposes of the references in subsection (2) to an agent acting within the authority of a durable power of attorney for an incapacitated principal:

(a) "incapacitated principal" means a principal who is an incapacitated person;

(b) no adjudication of incapacity before death is necessary; and

(c) the acts of an agent within the authority of a durable power of attorney are presumed to be for an incapacitated principal."

Section 32. Section 72-2-712, MCA, is amended to read:

"72-2-712. Requirement of survival by 120 hours. (1) For the purposes of chapters 1 through 5, except as provided in subsection (4), an individual who is not established by clear and convincing evidence to have survived an event, including the death of another individual, by 120 hours is ~~considered~~ deemed to have predeceased the event.

(2) Except as provided in subsection (4), for purposes of a provision of a governing instrument that relates to an individual surviving an event, including the death of another individual, an individual who is not established by clear and convincing evidence to have survived the event by 120 hours is ~~considered~~ deemed to have predeceased the event.

(3) (a) Except as provided in subsection (4), if:

(i) it is not established by clear and convincing evidence that one of two co-owners with right of survivorship survived the other co-owner by 120 hours, one-half of the property passes as if one had survived by 120 hours and one-half as if the other had survived by 120 hours; and

(ii) there are more than two co-owners and it is not established by clear and convincing evidence that at least one of them survived the others by 120 hours, the property passes in the proportion that one bears to the whole number of co-owners.

(b) For the purposes of this subsection (3), "co-owners with right of survivorship" includes joint tenants, tenants by the entireties, and other co-owners of property or accounts held under circumstances that entitle one or more to the whole of the property or account on the death of the other or others.

(4) Survival by 120 hours is not required if:

(a) the governing instrument contains language dealing explicitly with simultaneous deaths or deaths in a common disaster and that language is operable under the facts of the case;

(b) the governing instrument expressly indicates that an individual is not required to survive an event, including the death of another individual, by any specified period or expressly requires the individual to survive the event by a specified period. However, survival of the event or the specified period must be established by clear and convincing evidence.

(c) the imposition of a 120-hour requirement of survival would cause a nonvested property interest or a power of appointment to fail to qualify for validity under 72-2-1002(1)(a), (2)(a), or (3)(a) or to become invalid under 72-2-1002(1)(b), (2)(b), or (3)(b); however, survival must be established by clear and convincing evidence; or

(d) the application of a 120-hour requirement of survival to multiple governing instruments would result in an unintended failure or duplication of a disposition. However, survival must be established by clear and convincing evidence.

(5) (a) A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument who, under this section, is not

1 entitled to the payment or item of property, or for having taken any other action in good faith reliance on the
2 beneficiary's apparent entitlement under the terms of the governing instrument, before the payor or other third
3 party received written notice of a claimed lack of entitlement under this section. A payor or other third party is
4 liable for a payment made or other action taken after the payor or other third party received written notice of a
5 claimed lack of entitlement under this section.

6 (b) Written notice of a claimed lack of entitlement under subsection (5)(a) must be mailed to the payor's
7 or other third party's main office or home by registered or certified mail, return receipt requested, or served upon
8 the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice
9 of a claimed lack of entitlement under this section, a payor or other third party may pay any amount owed or
10 transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings
11 relating to the decedent's estate or, if no proceedings have been commenced, to or with the court having
12 jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's
13 residence. The court shall hold the funds or item of property and, upon its determination under this section, shall
14 order disbursement in accordance with the determination. Payments, transfers, or deposits made to or with the
15 court discharge the payor or other third party from all claims for the value of amounts paid to or items of property
16 transferred to or deposited with the court.

17 (6) (a) A person who purchases property for value and without notice or who receives a payment or other
18 item of property in partial or full satisfaction of a legally enforceable obligation is neither obligated under this
19 section to return the payment, item of property, or benefit nor liable under this section for the amount of the
20 payment or the value of the item of property or benefit. However, a person who, not for value, receives a payment,
21 item of property, or other benefit to which the person is not entitled under this section is obligated to return the
22 payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item
23 of property or benefit, to the person who is entitled to it under this section.

24 (b) If this section or any part of this section is preempted by federal law with respect to a payment, an
25 item of property, or any other benefit covered by this section, a person who, not for value, receives the payment,
26 item of property, or other benefit to which the person is not entitled under this section is obligated to return the
27 payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item
28 of property or benefit, to the person who would have been entitled to it were this section or part of this section not
29 preempted."
30

1 NEW SECTION. **Section 33. Class gifts construed to accord with intestate succession --**

2 **exceptions.** (1) As used in this section:

3 (a) "Adoptee" ~~has the meaning set forth in [section 13].~~ MEANS AN INDIVIDUAL WHO IS ADOPTED.

4 (b) "Child of assisted reproduction" ~~has the meaning set forth in [section 18].~~ MEANS A CHILD CONCEIVED
5 BY MEANS OF ASSISTED REPRODUCTION BY A WOMAN OTHER THAN A GESTATIONAL CARRIER.

6 (c) "Distribution date" means the date when an immediate or postponed class gift takes effect in
7 possession or enjoyment.

8 (d) "Functioned as a parent of the adoptee" ~~has the meaning set forth in [section 13], substituting~~
9 ~~"adoptee" for "child" in that definition.~~ MEANS BEHAVING TOWARD AN ADOPTEE IN A MANNER CONSISTENT WITH BEING
10 THE ADOPTEE'S PARENT AND PERFORMING FUNCTIONS THAT ARE CUSTOMARILY PERFORMED BY A PARENT, INCLUDING
11 FULFILLING PARENTAL RESPONSIBILITIES TOWARD THE ADOPTEE, RECOGNIZING OR HOLDING OUT THE ADOPTEE AS THE
12 INDIVIDUAL'S CHILD, MATERIALLY PARTICIPATING IN THE ADOPTEE'S UPBRINGING, AND RESIDING WITH THE ADOPTEE IN THE
13 SAME HOUSEHOLD AS A REGULAR MEMBER OF THAT HOUSEHOLD.

14 (e) "Functioned as a parent of the child" ~~has the meaning set forth in [section 13].~~ MEANS BEHAVING
15 TOWARD A CHILD IN A MANNER CONSISTENT WITH BEING THE CHILD'S PARENT AND PERFORMING FUNCTIONS THAT ARE
16 CUSTOMARILY PERFORMED BY A PARENT, INCLUDING FULFILLING PARENTAL RESPONSIBILITIES TOWARD THE CHILD,
17 RECOGNIZING OR HOLDING OUT THE CHILD AS THE INDIVIDUAL'S CHILD, MATERIALLY PARTICIPATING IN THE CHILD'S
18 UPBRINGING, AND RESIDING WITH THE CHILD IN THE SAME HOUSEHOLD AS A REGULAR MEMBER OF THAT HOUSEHOLD.

19 (f) "Genetic parent" ~~has the meaning set forth in [section 13].~~

20 (g) "Gestational child" ~~has the meaning set forth in [section 19].~~

21 (h)(F) "Relative" ~~has the meaning set forth in [section 13].~~ MEANS A GRANDPARENT OR A DESCENDANT OF
22 A GRANDPARENT.

23 (2) A class gift that uses a term of relationship to identify the class members includes a child of assisted
24 reproduction, a gestational child, and, except as otherwise provided in subsections (5) and (6), an adoptee and
25 a child born to parents who are not married to each other, and their respective descendants if appropriate to the
26 class, in accordance with the rules for intestate succession regarding parent-child relationships. For the purpose
27 of determining whether a contrary intention exists under 72-2-711, a provision in a governing instrument that
28 relates to the inclusion or exclusion in a class gift of a child born to parents who are not married to each other but
29 does not specifically refer to a child of assisted reproduction or a gestational child does not apply to a child of
30 assisted reproduction or a gestational child.

(3) Terms of relationship in a governing instrument that do not differentiate relationships by blood from those by marriage, such as uncles, aunts, nieces, or nephews, are construed to exclude relatives by marriage, unless:

(a) when the governing instrument was executed, the class was then and foreseeably would be empty; or

(b) the language or circumstances otherwise establish that relatives by marriage were intended to be included.

(4) Terms of relationship in a governing instrument that do not differentiate relationships by the half blood from those by the whole blood, such as brothers, sisters, nieces, or nephews, are construed to include both types of relationships.

(5) In construing a dispositive provision of a transferor who is not the genetic parent, a child of a genetic parent is not considered the child of a genetic parent unless that genetic parent, a relative of the genetic parent, or the spouse or surviving spouse of the genetic parent or of a relative of the genetic parent functioned as a parent of the child before the child reached 18 years of age.

(6) In construing a dispositive provision of a transferor who is not the adoptive parent, an adoptee is not considered the child of the adoptive parent unless:

(a) the adoption took place before the adoptee reached 18 years of age;

(b) the adoptive parent was the adoptee's stepparent or foster parent; or

(c) the adoptive parent functioned as a parent of the adoptee before the adoptee reached 18 years of age.

(7) The following rules apply for purposes of the class-closing rules:

(a) A child in utero at a particular time is treated as living at that time if the child lives 120 hours after birth.

(b) If a child of assisted reproduction or a gestational child is conceived posthumously and the distribution date is the deceased parent's death, the child is treated as living on the distribution date if the child lives 120 hours after birth and was in utero not later than 36 months after the deceased parent's death or born not later than 45 months after the deceased parent's death.

(c) An individual who is in the process of being adopted when the class closes is treated as adopted when the class closes if the adoption is subsequently granted.

Section 34. Section 72-2-716, MCA, is amended to read:

1 **"72-2-716. Life insurance -- retirement plan -- account with POD designation -- transfer-on-death**
2 **registration -- deceased beneficiary.** (1) As used in this section, the following definitions apply:

3 (a) "Alternative beneficiary designation" means a beneficiary designation that is expressly created by
4 the governing instrument and that under the terms of the governing instrument may take effect instead of another
5 beneficiary designation on the happening of one or more events, including survival of the decedent or failure to
6 survive the decedent, whether an event is expressed in condition-precedent, condition-subsequent, or any other
7 form.

8 (b) "Beneficiary" means the beneficiary of a beneficiary designation under which the beneficiary must
9 survive the decedent and includes:

10 (i) a class member if the beneficiary designation is in the form of a class gift; and

11 (ii) an individual or class member who was deceased at the time the beneficiary designation was
12 executed as well as an individual or class member who was then living but who failed to survive the decedent,
13 but excludes a joint tenant of a joint tenancy with the right of survivorship and a party to a joint and survivorship
14 account.

15 (c) "Beneficiary designation" includes an alternative beneficiary designation and a beneficiary designation
16 in the form of a class gift.

17 (d) "Class member" includes an individual who fails to survive the decedent but who would have taken
18 under a beneficiary designation in the form of a class gift had the individual survived the decedent.

19 ~~(e) "Descendant of a grandparent", as used in subsection (2), means an individual who qualifies as a~~
20 ~~descendant of a grandparent of the decedent under the:~~

21 ~~(i) rules of construction applicable to a class gift created in the decedent's beneficiary designation if the~~
22 ~~beneficiary designation is in the form of a class gift; or~~

23 ~~(ii) rules for intestate succession if the beneficiary designation is not in the form of a class gift.~~

24 ~~(f) "Descendants", as used in the phrase "surviving descendants" of a deceased beneficiary or class~~
25 ~~member in subsections (2)(a) and (2)(b), mean the descendants of a deceased beneficiary or class member who~~
26 ~~would take under a class gift created in the beneficiary designation.~~

27 ~~(e)(g)~~ "Stepchild" means a child of the decedent's surviving, deceased, or former spouse but not a child
28 of the decedent.

29 ~~(f)(h) "Surviving beneficiary" or "surviving descendant" means a beneficiary or a descendant "Surviving"~~
30 ~~in the phrase or "surviving beneficiaries" or "surviving descendants", means beneficiaries or descendants who~~

1 neither predeceased the decedent nor ~~is considered~~ are deemed to have predeceased the decedent under
2 72-2-712.

3 (2) If a beneficiary fails to survive the decedent and is a grandparent, a descendant of a grandparent,
4 or a stepchild of the decedent, the following ~~provisions~~ apply:

5 (a) Except as provided in subsection (2)(d), if the beneficiary designation is not in the form of a class gift
6 and the deceased beneficiary leaves surviving descendants, a substitute gift is created in the beneficiary's
7 surviving descendants. They take by representation the property to which the beneficiary would have been
8 entitled had the beneficiary survived the decedent.

9 (b) Except as provided in subsection (2)(d), if the beneficiary designation is in the form of a class gift,
10 other than a beneficiary designation to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives",
11 or "family" or a class described by language of similar import, a substitute gift is created in the surviving
12 descendants of any deceased beneficiary. The property to which the beneficiaries would have been entitled had
13 all of them survived the decedent passes to the surviving beneficiaries and the surviving descendants of the
14 deceased beneficiaries. Each surviving beneficiary takes the share to which the surviving beneficiary would have
15 been entitled had the deceased beneficiaries survived the decedent. Each deceased beneficiary's surviving
16 descendants who are substituted for the deceased beneficiary take by representation the share to which the
17 deceased beneficiary would have been entitled had the deceased beneficiary survived the decedent. For
18 purposes of this subsection (b), "deceased beneficiary" means a class member who failed to survive the decedent
19 and left one or more surviving descendants.

20 (c) For the purposes of 72-2-711, words of survivorship, such as in a beneficiary designation to an
21 individual "if the individual survives me" or in a beneficiary designation to "my surviving children", are not, in the
22 absence of additional evidence, a sufficient indication of an intent contrary to the application of this section.

23 (d) If a governing instrument creates an alternative beneficiary designation with respect to a beneficiary
24 designation for which a substitute gift is created by subsection (2)(a) or (2)(b), the substitute gift is superseded
25 by the alternative beneficiary designation ~~only if an expressly designated beneficiary of the alternative beneficiary~~
26 ~~designation is entitled to take. if:~~

27 (i) the alternative beneficiary designation is in the form of a class gift and one or more members of the
28 class is entitled to take; or

29 (ii) the alternative beneficiary designation is not in the form of a class gift and the expressly designated
30 beneficiary of the alternative beneficiary designation is entitled to take.

1 (3) If, under subsection (2), substitute gifts are created and not superseded with respect to more than
2 one beneficiary designation and the beneficiary designations are alternative beneficiary designations, one to the
3 other, the determination of which of the substitute gifts takes effect is resolved as follows:

4 (a) Except as provided in subsection (3)(b), the property passes under the primary substitute gift.

5 (b) If there is a younger-generation beneficiary designation, the property passes under the
6 younger-generation substitute gift and not under the primary substitute gift.

7 (c) As used in this subsection (3), the following definitions apply:

8 (i) "Primary beneficiary designation" means the beneficiary designation that would have taken effect had
9 all the deceased beneficiaries of the alternative beneficiary designations who left surviving descendants survived
10 the decedent.

11 (ii) "Primary substitute gift" means the substitute gift created with respect to the primary beneficiary
12 designation.

13 (iii) "Younger-generation beneficiary designation" means a beneficiary designation that:

14 (A) is to a descendant of a beneficiary of the primary beneficiary designation;

15 (B) is an alternative beneficiary designation with respect to the primary beneficiary designation;

16 (C) is a beneficiary designation for which a substitute gift is created; and

17 (D) would have taken effect had all the deceased beneficiaries who left surviving descendants survived
18 the decedent except the deceased beneficiary or beneficiaries of the primary beneficiary designation.

19 (iv) "Younger-generation substitute gift" means the substitute gift created with respect to the
20 younger-generation beneficiary designation.

21 (4) (a) A payor is protected from liability in making payments under the terms of the beneficiary
22 designation until the payor has received written notice of a claim to a substitute gift under this section. Payment
23 made before the receipt of written notice of a claim to a substitute gift under this section discharges the payor,
24 but not the recipient, from all claims for the amounts paid. A payor is liable for a payment made after the payor
25 has received written notice of the claim. A recipient is liable for a payment received, whether or not written notice
26 of the claim is given.

27 (b) The written notice of the claim must be mailed to the payor's main office or home by certified mail,
28 return receipt requested, or served upon the payor in the same manner as a summons in a civil action. Upon
29 receipt of written notice of the claim, a payor may pay any amount owed by it to the court having jurisdiction of
30 the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to the

1 court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the
2 decedent's residence. The court shall hold the funds and, upon its determination under this section, shall order
3 disbursement in accordance with the determination. Payment made to the court discharges the payor from all
4 claims for the amounts paid.

5 (5) (a) A person who purchases property for value and without notice or who receives a payment or other
6 item of property in partial or full satisfaction of a legally enforceable obligation is neither obligated under this
7 section to return the payment, item of property, or benefit nor liable under this section for the amount of the
8 payment or the value of the item of property or benefit. However, a person who, not for value, receives a payment,
9 item of property, or other benefit to which the person is not entitled under this section is obligated to return the
10 payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item
11 of property or benefit, to the person who is entitled to it under this section.

12 (b) If this section or any part of this section is preempted by federal law with respect to a payment, an
13 item of property, or any other benefit covered by this section, a person who, not for value, receives the payment,
14 item of property, or other benefit to which the person is not entitled under this section is obligated to return the
15 payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item
16 of property or benefit, to the person who would have been entitled to it were this section or part of this section not
17 preempted."

18
19 **Section 35.** Section 72-2-717, MCA, is amended to read:

20 **"72-2-717. Survivorship with respect to future interests under terms of trust -- substitute takers.**

21 (1) As used in this section, the following definitions apply:

22 (a) "Alternative future interest" means an expressly created future interest that may take effect in
23 possession or enjoyment instead of another future interest on the happening of one or more events, including
24 survival of an event or failure to survive an event, whether an event is expressed in condition-precedent,
25 condition-subsequent, or any other form. A residuary clause in a will does not create an alternative future interest
26 with respect to a future interest created in a nonresiduary devise in the will, whether or not the will specifically
27 provides that lapsed or failed devises are to pass under the residuary clause.

28 (b) "Beneficiary" means the beneficiary of a future interest and includes a class member if the future
29 interest is in the form of a class gift.

30 (c) "Class member" includes an individual who fails to survive the distribution date but who would have

1 taken under a future interest in the form of a class gift had the individual survived the distribution date.

2 (d) "Descendants", in the phrase "surviving descendants" of a deceased beneficiary or class member in
3 subsections (2)(a) and (2)(b), mean the descendants of a deceased beneficiary or class member who would take
4 under a class gift created in the trust.

5 ~~(d)~~(e) "Distribution date" with respect to a future interest means the time when the future interest is to
6 take effect in possession or enjoyment. The distribution date need not occur at the beginning or end of a calendar
7 day, but may occur at a time during the course of a day.

8 ~~(e)~~(f) "Future interest" includes an alternative future interest and a future interest in the form of a class
9 gift.

10 ~~(f)~~(g) "Future interest under the terms of a trust" means a future interest that was created by a transfer
11 creating a trust or to an existing trust or by an exercise of a power of appointment to an existing trust that directs
12 the continuance of an existing trust, designates a beneficiary of an existing trust, or creates a trust.

13 ~~(g)~~(h) ~~"Surviving beneficiary" or "surviving descendant" means a beneficiary or a descendant~~ "Surviving"
14 in the phrase "surviving beneficiaries" or "surviving descendants" means beneficiaries or descendants who
15 neither predeceased the distribution date nor ~~is considered~~ are deemed to have predeceased the distribution date
16 under 72-2-712.

17 (2) A future interest under the terms of a trust is contingent on the beneficiary surviving the distribution
18 date. If a beneficiary of a future interest under the terms of a trust fails to survive the distribution date, the
19 following provisions apply:

20 (a) Except as provided in subsection (2)(d), if the future interest is not in the form of a class gift and the
21 deceased beneficiary leaves surviving descendants, a substitute gift is created in the beneficiary's surviving
22 descendants. They take by representation the property to which the beneficiary would have been entitled had
23 the beneficiary survived the distribution date.

24 (b) Except as provided in subsection (2)(d), if the future interest is in the form of a class gift, other than
25 a future interest to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives", or "family" or a
26 class described by language of similar import, a substitute gift is created in the surviving descendants of any
27 deceased beneficiary. The property to which the beneficiaries would have been entitled had all of them survived
28 the distribution date passes to the surviving beneficiaries and the surviving descendants of the deceased
29 beneficiaries. Each surviving beneficiary takes the share to which the surviving beneficiary would have been
30 entitled had the deceased beneficiaries survived the distribution date. Each deceased beneficiary's surviving

1 descendants who are substituted for the deceased beneficiary take by representation the share to which the
2 deceased beneficiary would have been entitled had the deceased beneficiary survived the distribution date. For
3 purposes of this subsection (2), "deceased beneficiary" means a class member who failed to survive the
4 distribution date and left one or more surviving descendants.

5 (c) For the purposes of 72-2-711, words of survivorship attached to a future interest are not, in the
6 absence of additional evidence, a sufficient indication of an intent contrary to the application of this section. Words
7 of survivorship include words of survivorship that relate to the distribution date or to an earlier or an unspecified
8 time, whether those words of survivorship are expressed in condition-precedent, condition-subsequent, or any
9 other form.

10 (d) If a governing instrument creates an alternative future interest with respect to a future interest for
11 which a substitute gift is created by subsection (2)(a) or (2)(b), the substitute gift is superseded by the alternative
12 future interest only if an if:

13 (i) the alternative future interest is in the form of a class gift and one or more members of the class is
14 entitled to take in possession or enjoyment; or

15 (ii) the alternative future interest is not in the form of a class gift and the expressly designated beneficiary
16 of the alternative future interest is entitled to take in possession or enjoyment.

17 (3) If, under subsection (2), substitute gifts are created and not superseded with respect to more than
18 one future interest and the future interests are alternative future interests, one to the other, the determination of
19 which of the substitute gifts takes effect is resolved as follows:

20 (a) Except as provided in subsection (3)(b), the property passes under the primary substitute gift.

21 (b) If there is a younger-generation future interest, the property passes under the younger-generation
22 substitute gift and not under the primary substitute gift.

23 (c) As used in this subsection (3), the following definitions apply:

24 (i) "Primary future interest" means the future interest that would have taken effect had all the deceased
25 beneficiaries of the alternative future interests who left surviving descendants survived the distribution date.

26 (ii) "Primary substitute gift" means the substitute gift created with respect to the primary future interest.

27 (iii) "Younger-generation future interest" means a future interest that:

28 (A) is to a descendant of a beneficiary of the primary future interest;

29 (B) is an alternative future interest with respect to the primary future interest;

30 (C) is a future interest for which a substitute gift is created; and

(D) would have taken effect had all the deceased beneficiaries who left surviving descendants survived the distribution date except the deceased beneficiary or beneficiaries of the primary future interest.

(iv) "Younger-generation substitute gift" means the substitute gift created with respect to the younger-generation future interest.

(4) Except as provided in subsection (5), if, after the application of subsections (2) and (3), there is no surviving taker, the property passes in the following order:

(a) if the trust was created in a nonresiduary devise in the transferor's will or in a codicil to the transferor's will, the property passes under the residuary clause in the transferor's will. For purposes of this section, the residuary clause is treated as creating a future interest under the terms of a trust.

(b) if no taker is produced by the application of subsection (4)(a), the property passes to the transferor's heirs under 72-2-721.

(5) If, after the application of subsections (2) and (3), there is no surviving taker and if the future interest was created by the exercise of a power of appointment:

(a) the property passes under the donor's gift-in-default clause, if any, which clause is treated as creating a future interest under the terms of a trust; and

(b) if no taker is produced by the application of subsection (5)(a), the property passes as provided in subsection (4). For purposes of subsection (4), "transferor" means the donor if the power was a nongeneral power and means the donee if the power was a general power."

Section 36. Section 72-2-813, MCA, is amended to read:

"72-2-813. Effect of homicide on intestate succession, wills, trusts, joint assets, life insurance, and beneficiary designations. (1) For purposes of this section, the following definitions apply:

(a) "Disposition or appointment of property" includes a transfer of an item of property or any other benefit to a beneficiary designated in a governing instrument.

(b) "Governing instrument" means a governing instrument executed by the decedent.

(c) "Revocable", with respect to a disposition, appointment, provision, or nomination, means one under which the decedent, at the time of or immediately before death, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of the killer, whether or not the decedent was then empowered to designate the decedent in place of the decedent's killer and whether or not the decedent then had capacity to exercise the power.

(2) An individual who feloniously and intentionally kills the decedent forfeits all benefits under this chapter with respect to the decedent's estate, including an intestate share, an elective share, an omitted spouse's or child's share, a homestead allowance, exempt property, and a family allowance. If the decedent died intestate, the decedent's intestate estate passes as if the killer disclaimed the killer's intestate share.

(3) The felonious and intentional killing of the decedent:

(a) revokes any revocable:

(i) disposition or appointment of property made by the decedent to the killer in a governing instrument;

(ii) provision in a governing instrument conferring a general or nongeneral power of appointment on the killer; and

(iii) nomination of the killer in a governing instrument, nominating or appointing the killer to serve in any fiduciary or representative capacity, including a personal representative, executor, trustee, or agent; and

(b) severs the interests of the decedent and killer in property held by them at the time of the killing as joint tenants with the right of survivorship and transforms the interests of the decedent and killer into tenancies in common.

(4) A severance under subsection (3)(b) does not affect any third-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the killer unless a writing declaring the severance has been noted, registered, filed, or recorded in records appropriate to the kind and location of the property, which records are relied upon, in the ordinary course of transactions involving such property, as evidence of ownership.

(5) Provisions of a governing instrument are given effect as if the killer disclaimed all provisions revoked by this section or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the killer predeceased the decedent.

(6) A wrongful acquisition of property or interest by a killer not covered by this section must be treated in accordance with the principle that a killer cannot profit from the killer's wrong.

(7) After all right to appeal has been exhausted, a judgment of conviction establishing criminal accountability for the felonious and intentional killing of the decedent conclusively establishes the convicted individual as the decedent's killer for purposes of this section. In the absence of a conviction, the court, upon the petition of an interested person, shall determine whether, under the preponderance of evidence standard, the individual would be found criminally accountable for the felonious and intentional killing of the decedent. If the court determines that under that standard the individual would be found criminally accountable for the felonious

1 and intentional killing of the decedent, the determination conclusively establishes that individual as the decedent's
2 killer for purposes of this section.

3 (8) (a) A payor or other third party is not liable for having made a payment or transferred an item of
4 property or any other benefit to a beneficiary designated in a governing instrument affected by an intentional and
5 felonious killing, or for having taken any other action in good faith reliance on the validity of the governing
6 instrument, upon request and satisfactory proof of the decedent's death, before the payor or other third party
7 received written notice of a claimed forfeiture or revocation under this section. A payor or other third party does
8 not have a duty or obligation to make any determination as to whether the decedent was a victim of a homicide
9 or to seek any evidence with respect to a homicide even if the circumstances of the decedent's death are
10 suspicious or questionable as to the beneficiary's participation in a homicide. A payor or other third party is only
11 liable for actions taken 2 or more business days after the actual receipt by the payor or other third party of written
12 notice. The payor or other third party may be liable for actions taken pursuant to the governing instrument only
13 if the form of the service is that described in subsection (8)(b).

14 (b) The written notice must indicate the name of the decedent, the name of the person asserting an
15 interest, the nature of the payment or item of property or other benefit, and a statement that a claim of forfeiture
16 or revocation is being made under this section. Written notice of a claimed forfeiture or revocation under
17 subsection (8)(a) must be mailed to the payor's or other third party's main office or home by certified mail, return
18 receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil
19 action. Notice to a sales representative of the payor or other third party does not constitute notice to the payor
20 or other third party. Upon receipt of written notice of a claimed forfeiture or revocation under this section, a payor
21 or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the
22 court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have
23 been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates
24 located in the county of the decedent's residence. In addition to the actions available under this section, the payor
25 or other third party may take any action authorized by law or the governing instrument. If probate proceedings
26 have not been commenced, the payor or other third party shall file with the court a copy of the written notice
27 received by the payor or other third party, with the payment of funds or transfer or deposit of property. The court
28 may not charge a filing fee to the payor or other third party for the payment to the court of amounts owed or
29 transferred to or deposited with the court or any item of property. The court shall hold the funds or item of property
30 and, upon its determination under this section, shall order disbursement in accordance with the determination.

1 A filing fee, if any, may be charged upon disbursement either to the recipient or against the funds or property on
2 deposit with the court, in the discretion of the court. Payments, transfers, or deposits made to or with the court
3 discharge the payor or other third party from all claims for the value of amounts paid to or items of property
4 transferred to or deposited with the court.

5 (9) (a) A bona fide purchaser who purchases property or who receives a payment or other item of
6 property in partial or full satisfaction of a legally enforceable obligation is neither obligated under this section to
7 return the payment, item of property, or benefit nor liable under this section for the amount of the payment or the
8 value of the item of property or benefit. However, a person who, not for value, receives a payment, item of
9 property, or other benefit to which the person is not entitled under this section is obligated to return the payment,
10 item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of
11 property or benefit, to the person who is entitled to it under this section.

12 (b) If this section or any part of this section is preempted by federal law, ~~other than the federal Employee~~
13 ~~Retirement Income Security Act of 1974, as amended~~, with respect to a payment, an item of property, or any
14 other benefit covered by this section, a person who, not for value, receives the payment, item of property, or other
15 benefit to which the person is not entitled under this section is obligated to return the payment, item of property,
16 or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to
17 the person who would have been entitled to it were this section or part of this section not preempted.

18 (10) For the purposes of this section, a felonious and intentional killing includes a deliberate homicide
19 as defined in 45-5-102 and a mitigated deliberate homicide as defined in 45-5-103."
20

21 **Section 37.** Section 72-2-814, MCA, is amended to read:

22 **"72-2-814. Revocation of probate and nonprobate transfers by divorce -- no revocation by other**
23 **changes of circumstances.** (1) As used in this section, the following definitions apply:

24 (a) "Disposition or appointment of property" includes a transfer of an item of property or any other benefit
25 to a beneficiary designated in a governing instrument.

26 (b) "Divorce or annulment" means any divorce, annulment, or dissolution or declaration of invalidity of
27 a marriage that would exclude the spouse as a surviving spouse within the meaning of 72-2-812. A decree of
28 separation that does not terminate the status of husband and wife is not a divorce for purposes of this section.

29 (c) "Divorced individual" includes an individual whose marriage has been annulled.

30 (d) "Governing instrument" means a governing instrument executed by the divorced individual before

1 the divorce or annulment of the individual's marriage to the individual's former spouse.

2 (e) "Relative of the divorced individual's former spouse" means an individual who is related to the
3 divorced individual's former spouse by blood, adoption, or affinity and who, after the divorce or annulment, is not
4 related to the divorced individual by blood, adoption, or affinity.

5 (f) "Revocable", with respect to a disposition, appointment, provision, or nomination, means one under
6 which the divorced individual, at the time of the divorce or annulment, was alone empowered, by law or under
7 the governing instrument, to cancel the designation in favor of the individual's former spouse or former spouse's
8 relative, whether or not the divorced individual was then empowered to designate the divorced individual in place
9 of the individual's former spouse or in place of the former spouse's relative and whether or not the divorced
10 individual then had the capacity to exercise the power.

11 (2) Except as to a retirement system established in Title 19 or as provided by the express terms of a
12 governing instrument, a court order, or a contract relating to the division of the marital estate made between the
13 divorced individuals before or after the marriage, divorce, or annulment, the divorce or annulment of a marriage:

14 (a) revokes any revocable:

15 (i) disposition or appointment of property made by a divorced individual to the individual's former spouse
16 in a governing instrument and any disposition or appointment created by law or in a governing instrument to a
17 relative of the divorced individual's former spouse;

18 (ii) provision in a governing instrument conferring a general or nongeneral power of appointment on the
19 divorced individual's former spouse or on a relative of the divorced individual's former spouse; and

20 (iii) nomination in a governing instrument that nominates a divorced individual's former spouse or a
21 relative of the divorced individual's former spouse to serve in any fiduciary or representative capacity, including
22 a personal representative, executor, trustee, conservator, agent, or guardian; and

23 (b) severs the interests of the former spouses in property held by them at the time of the divorce or
24 annulment as joint tenants with the right of survivorship and transforms the interests of the former spouses into
25 tenancies in common.

26 (3) A severance under subsection (2)(b) does not affect any third-party interest in property acquired for
27 value and in good faith reliance on an apparent title by survivorship in the survivor of the former spouses unless
28 a writing declaring the severance has been noted, registered, filed, or recorded in records appropriate to the kind
29 and location of the property, which records are relied upon, in the ordinary course of transactions involving such
30 property, as evidence of ownership.

1 (4) Provisions of a governing instrument are given effect as if the former spouse and relatives of the
2 former spouse disclaimed all provisions revoked by this section or, in the case of a revoked nomination in a
3 fiduciary or representative capacity, as if the former spouse and relatives of the former spouse died immediately
4 before the divorce or annulment.

5 (5) Provisions revoked solely by this section are revived by the divorced individual's remarriage to the
6 former spouse or by a nullification of the divorce or annulment.

7 (6) No change of circumstances other than as described in this section and in 72-2-813 effects a
8 revocation.

9 (7) (a) A payor or other third party is not liable for having made a payment or transferred an item of
10 property or any other benefit to a beneficiary designated in a governing instrument affected by a divorce,
11 annulment, or remarriage, or for having taken any other action in good faith reliance on the validity of the
12 governing instrument, before the payor or other third party received written notice of the divorce, annulment, or
13 remarriage. A payor or other third party does not have a duty or obligation to inquire as to the continued marital
14 relationship between the decedent and a beneficiary or to seek any evidence with respect to a marital
15 relationship. A payor or other third party is only liable for actions taken 2 or more business days after the actual
16 receipt by the payor or other third party of written notice. The payor or other third party may be liable for actions
17 taken pursuant to the governing instrument only if the form of service is that described in subsection (7)(b).

18 (b) The written notice must indicate the name of the decedent, the name of the person asserting an
19 interest, the nature of the payment or item of property or other benefit, and a statement that a dissolution,
20 annulment, or remarriage of the decedent and the designated beneficiary occurred. Written notice of the divorce,
21 annulment, or remarriage under subsection (7)(a) must be mailed to the payor's or other third party's main office
22 or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in
23 the same manner as a summons in a civil action. Upon receipt of written notice of the divorce, annulment, or
24 remarriage, a payor or other third party may pay any amount owed or transfer or deposit any item of property held
25 by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no
26 proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to
27 decedents' estates located in the county of the decedent's residence. In addition to the actions available under
28 this section, the payor or other third party may take any action authorized by law or the governing instrument. If
29 probate proceedings have not been commenced, the payor or other third party shall file with the court a copy of
30 the written notice received by the payor or other third party, with the payment of funds or transfer or deposit of

1 property. The court may not charge a filing fee to the payor or other third party for the payment to the court of
2 amounts owed or transferred to or deposited with the court or any item of property. The court shall hold the funds
3 or item of property and, upon its determination under this section, shall order disbursement or transfer in
4 accordance with the determination. A filing fee, if any, may, in the discretion of the court, be charged upon
5 disbursement either to the recipient or against the funds or property on deposit with the court. Payments,
6 transfers, or deposits made to or with the court discharge the payor or other third party from all claims for the
7 value of amounts paid to or items of property transferred to or deposited with the court.

8 (8) (a) A bona fide purchaser who purchases property from a former spouse, relative of a former spouse,
9 or any other person or who receives from a former spouse, relative of a former spouse, or any other person for
10 value and without notice a payment or other item of property in partial or full satisfaction of a legally enforceable
11 obligation is neither obligated under this section to return the payment, item of property, or benefit nor liable under
12 this section for the amount of the payment or the value of the item of property or benefit. However, a former
13 spouse, relative of a former spouse, or other person who, not for value, received a payment, item of property, or
14 other benefit to which that person is not entitled under this section is obligated to return the payment, item of
15 property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or
16 benefit, to the person who is entitled to it under this section.

17 (b) If this section or any part of this section is preempted by federal law, ~~other than the federal Employee~~
18 ~~Retirement Income Security Act of 1974, as amended~~, with respect to a payment, an item of property, or any
19 other benefit covered by this section, a former spouse, relative of the former spouse, or any other person who,
20 not for value, received a payment, item of property, or other benefit to which that person is not entitled under this
21 section is obligated to return that payment, item of property, or benefit, or is personally liable for the amount of
22 the payment or the value of the item of property or benefit, to the person who would have been entitled to it were
23 this section or part of this section not preempted.

24 (9) The provisions of this section apply to testate and intestate estates, and in the event of a conflict
25 between the provisions of this section and those provided in chapters 1 through 5 and chapter 16, part 6, of this
26 title, the provisions of this section control. This subsection does not apply if a divorced individual designates a
27 former spouse as personal representative of the estate subsequent to the divorce."
28

29 **NEW SECTION. Section 38. Reformation to correct mistakes.** The court may reform the terms of
30 a governing instrument, even if unambiguous, to conform the terms to the transferor's intention if it is proved by

1 clear and convincing evidence what the transferor's intention was and that the terms of the governing instrument
2 were affected by a mistake of fact or law, whether in expression or inducement.

3
4 **NEW SECTION. Section 39. Modification to achieve transferor's tax objectives.** To achieve the
5 transferor's tax objectives, the court may modify the terms of a governing instrument in a manner that is not
6 contrary to the transferor's probable intention. The court may provide that the modification has retroactive effect.

7
8 **NEW SECTION. Section 40. Short title.** [Sections ~~47 through 63~~ 40 THROUGH 56] may be cited as the
9 "Uniform Disclaimer of Property Interests Act".

10
11 **NEW SECTION. Section 41. Definitions.** As used in [sections ~~47 through 63~~ 40 THROUGH 56] the
12 following definitions apply:

13 (1) "Disclaimant" means the person to whom a disclaimed interest or power would have passed had the
14 disclaimer not been made.

15 (2) "Disclaimed interest" means the interest that would have passed to the disclaimant had the disclaimer
16 not been made.

17 (3) "Disclaimer" means the refusal to accept an interest in or power over property.

18 (4) "Fiduciary" means a personal representative, trustee, agent acting under a power of attorney, or other
19 person authorized to act as a fiduciary with respect to the property of another person.

20 (5) "Jointly held property" means property held in the name of two or more persons under an arrangement
21 in which all holders have concurrent interests and under which the last surviving holder is entitled to the whole
22 of the property.

23 (6) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability
24 company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public
25 corporation, or any other legal or commercial entity.

26 (7) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States
27 Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term
28 includes an Indian tribe or band, or Alaskan native village, recognized by federal law or formally acknowledged
29 by a state.

30 (8) "Trust" means:

1 (a) an express trust, charitable or noncharitable, with additions thereto, whenever and however created;
2 and

3 (b) a trust created pursuant to a statute, judgment, or decree which requires the trust to be administered
4 in the manner of an express trust.

5
6 **NEW SECTION. Section 42. Scope.** [Sections ~~47 through 63~~ 40 THROUGH 56] applies to disclaimers
7 of any interest in or power over property, whenever created.

8
9 **NEW SECTION. Section 43. [Sections ~~47 through 63~~ 40 THROUGH 56] supplemented by other law.**
10 (1) Unless displaced by a provision of [sections ~~47 through 63~~ 40 THROUGH 56], the principles of law and equity
11 supplement [sections ~~47 through 63~~ 40 THROUGH 56].

12 (2) [Sections ~~47 through 63~~ 40 THROUGH 56] do not limit any right of a person to waive, release, disclaim,
13 or renounce an interest in or power over property under a law other than [sections ~~47 through 63~~ 40 THROUGH 56].

14
15 **NEW SECTION. Section 44. Power to disclaim -- general requirements -- when revocable.** (1) A
16 person may disclaim, in whole or part, any interest in or power over property, including a power of appointment.
17 A person may disclaim the interest or power even if its creator imposed a spendthrift provision or similar
18 restriction on transfer or a restriction or limitation on the right to disclaim.

19 (2) Except to the extent a fiduciary's right to disclaim is expressly restricted or limited by another statute
20 of this state or by the instrument creating the fiduciary relationship, a fiduciary may disclaim, in whole or part, any
21 interest in or power over property, including a power of appointment, whether acting in a personal or
22 representative capacity. A fiduciary may disclaim the interest or power even if its creator imposed a spendthrift
23 provision or similar restriction on transfer or a restriction or limitation on the right to disclaim or an instrument other
24 than the instrument that created the fiduciary relationship imposed a restriction or limitation on the right to
25 disclaim.

26 (3) To be effective, a disclaimer must be in a writing or other record, declare the disclaimer, describe the
27 interest or power disclaimed, be signed by the person making the disclaimer, and be delivered or filed in the
28 manner provided in [section ~~58~~ 51]. In this subsection:

29 (a) "record" means information that is inscribed on a tangible medium or that is stored in an electronic
30 or other medium and is retrievable in perceivable form; and

(b) "signed" means, with present intent to authenticate or adopt a record, to:

(i) execute or adopt a tangible symbol; or

(ii) attach to or logically associate with the record an electronic sound, symbol, or process.

(4) A partial disclaimer may be expressed as a fraction, percentage, monetary amount, term of years, limitation of a power, or any other interest or estate in the property.

(5) A disclaimer becomes irrevocable when it is delivered or filed pursuant to [section ~~58~~ 51] or when it becomes effective as provided in [sections ~~52 through 57~~ 45 THROUGH 50], whichever occurs later.

(6) A disclaimer made under [sections ~~47 through 63~~ 40 THROUGH 56] is not a transfer, assignment, or release.

NEW SECTION. Section 45. Disclaimer of interest in property. (1) In this section:

(a) "Future interest" means an interest that takes effect in possession or enjoyment, if at all, later than the time of its creation.

(b) "Time of distribution" means the time when a disclaimed interest would have taken effect in possession or enjoyment.

(2) Except for a disclaimer governed by [section ~~53 or 54~~ 46 OR 47], the following rules apply to a disclaimer of an interest in property:

(a) The disclaimer takes effect as of the time the instrument creating the interest becomes irrevocable, or, if the interest arose under the law of intestate succession, as of the time of the intestate's death.

(b) The disclaimed interest passes according to any provision in the instrument creating the interest providing for the disposition of the interest, should it be disclaimed, or of disclaimed interests in general.

(c) If the instrument does not contain a provision described in subsection (2)(b), the following rules apply:

(i) If the disclaimant is not an individual, the disclaimed interest passes as if the disclaimant did not exist.

(ii) If the disclaimant is an individual, except as otherwise provided in subsections (2)(c)(iii) and (2)(c)(iv), the disclaimed interest passes as if the disclaimant had died immediately before the time of distribution.

(iii) If by law or under the instrument, the descendants of the disclaimant would share in the disclaimed interest by any method of representation had the disclaimant died before the time of distribution, the disclaimed interest passes only to the descendants of the disclaimant who survive the time of distribution.

(iv) If the disclaimed interest would pass to the disclaimant's estate had the disclaimant died before the time of distribution, the disclaimed interest instead passes by representation to the descendants of the disclaimant

1 who survive the time of distribution. If no descendant of the disclaimant survives the time of distribution, the
2 disclaimed interest passes to those persons, including the state but excluding the disclaimant, and in such shares
3 as would succeed to the transferor's intestate estate under the intestate succession law of the transferor's
4 domicile had the transferor died at the time of distribution. However, if the transferor's surviving spouse is living
5 but is remarried at the time of distribution, the transferor is deemed to have died unmarried at the time of
6 distribution.

7 (d) Upon the disclaimer of a preceding interest, a future interest held by a person other than the
8 disclaimant takes effect as if the disclaimant had died or ceased to exist immediately before the time of
9 distribution, but a future interest held by the disclaimant is not accelerated in possession or enjoyment.

10
11 **NEW SECTION. Section 46. Disclaimer of rights of survivorship in jointly held property.** (1) Upon
12 the death of a holder of jointly held property, a surviving holder may disclaim, in whole or part, the greater of:

13 (a) a fractional share of the property determined by dividing the number one by the number of joint
14 holders alive immediately before the death of the holder to whose death the disclaimer relates; or

15 (b) all of the property except that part of the value of the entire interest attributable to the contribution
16 furnished by the disclaimant.

17 (2) A disclaimer under subsection (1) takes effect as of the death of the holder of jointly held property to
18 whose death the disclaimer relates.

19 (3) An interest in jointly held property disclaimed by a surviving holder of the property passes as if the
20 disclaimant predeceased the holder to whose death the disclaimer relates.

21
22 **NEW SECTION. Section 47. Disclaimer of interest by trustee.** If a trustee disclaims an interest in
23 property that otherwise would have become trust property, the interest does not become trust property.

24
25 **NEW SECTION. Section 48. Disclaimer of power of appointment or other power not held in**
26 **fiduciary capacity.** If a holder disclaims a power of appointment or other power not held in a fiduciary capacity,
27 the following rules apply:

28 (1) If the holder has not exercised the power, the disclaimer takes effect as of the time the instrument
29 creating the power becomes irrevocable.

30 (2) If the holder has exercised the power and the disclaimer is of a power other than a presently

exercisable general power of appointment, the disclaimer takes effect immediately after the last exercise of the power.

(3) The instrument creating the power is construed as if the power expired when the disclaimer became effective.

NEW SECTION. Section 49. Disclaimer by appointee, object, or taker in default of exercise of power of appointment. (1) A disclaimer of an interest in property by an appointee of a power of appointment takes effect as of the time the instrument by which the holder exercises the power becomes irrevocable.

(2) A disclaimer of an interest in property by an object or taker in default of an exercise of a power of appointment takes effect as of the time the instrument creating the power becomes irrevocable.

NEW SECTION. Section 50. Disclaimer of power held in fiduciary capacity. (1) If a fiduciary disclaims a power held in a fiduciary capacity which has not been exercised, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable.

(2) If a fiduciary disclaims a power held in a fiduciary capacity which has been exercised, the disclaimer takes effect immediately after the last exercise of the power.

(3) A disclaimer under this section is effective as to another fiduciary if the disclaimer so provides and the fiduciary disclaiming has the authority to bind the estate, trust, or other person for whom the fiduciary is acting.

NEW SECTION. Section 51. Delivery or filing. (1) In this section, "beneficiary designation" means an instrument, other than an instrument creating a trust, naming the beneficiary of:

- (a) an annuity or insurance policy;
- (b) an account with a designation for payment on death;
- (c) a security registered in beneficiary form;
- (d) a pension, profit-sharing, retirement, or other employment-related benefit plan; or
- (e) any other nonprobate transfer at death.

(2) Subject to subsections (3) through (12), delivery of a disclaimer may be effected by personal delivery, first-class mail, or any other method likely to result in its receipt.

(3) In the case of an interest created under the law of intestate succession or an interest created by will, other than an interest in a testamentary trust:

- 1 (a) a disclaimer must be delivered to the personal representative of the decedent's estate; or
- 2 (b) if no personal representative is then serving, it must be filed with a court having jurisdiction to appoint
- 3 the personal representative.
- 4 (4) In the case of an interest in a testamentary trust:
- 5 (a) a disclaimer must be delivered to the trustee then serving, or if no trustee is then serving, to the
- 6 personal representative of the decedent's estate; or
- 7 (b) if no personal representative is then serving, it must be filed with a court having jurisdiction to enforce
- 8 the trust.
- 9 (5) In the case of an interest in an inter vivos trust:
- 10 (a) a disclaimer must be delivered to the trustee then serving;
- 11 (b) if no trustee is then serving, it must be filed with a court having jurisdiction to enforce the trust; or
- 12 (c) if the disclaimer is made before the time the instrument creating the trust becomes irrevocable, it must
- 13 be delivered to the settlor of a revocable trust or the transferor of the interest.
- 14 (6) In the case of an interest created by a beneficiary designation which is disclaimed before the
- 15 designation becomes irrevocable, the disclaimer must be delivered to the person making the beneficiary
- 16 designation.
- 17 (7) In the case of an interest created by a beneficiary designation which is disclaimed after the
- 18 designation becomes irrevocable:
- 19 (a) the disclaimer of an interest in personal property must be delivered to the person obligated to
- 20 distribute the interest; and
- 21 (b) the disclaimer of an interest in real property must be recorded in the office of the county recorder of
- 22 the county where the real property that is the subject of the disclaimer is located.
- 23 (8) In the case of a disclaimer by a surviving holder of jointly held property, the disclaimer must be
- 24 delivered to the person to whom the disclaimed interest passes.
- 25 (9) In the case of a disclaimer by an object or taker in default of exercise of a power of appointment at
- 26 any time after the power was created:
- 27 (a) the disclaimer must be delivered to the holder of the power or to the fiduciary acting under the
- 28 instrument that created the power; or
- 29 (b) if no fiduciary is then serving, it must be filed with a court having authority to appoint the fiduciary.
- 30 (10) In the case of a disclaimer by an appointee of a nonfiduciary power of appointment:

(a) the disclaimer must be delivered to the holder, the personal representative of the holder's estate or to the fiduciary under the instrument that created the power; or

(b) if no fiduciary is then serving, it must be filed with a court having authority to appoint the fiduciary.

(11) In the case of a disclaimer by a fiduciary of a power over a trust or estate, the disclaimer must be delivered as provided in subsection (3), (4), or (5), as if the power disclaimed were an interest in property.

(12) In the case of a disclaimer of a power by an agent, the disclaimer must be delivered to the principal or the principal's representative.

NEW SECTION. Section 52. When disclaimer barred or limited. (1) A disclaimer is barred by a written waiver of the right to disclaim.

(2) A disclaimer of an interest in property is barred if any of the following events occur before the disclaimer becomes effective:

(a) the disclaimant accepts the interest sought to be disclaimed;

(b) the disclaimant voluntarily assigns, conveys, encumbers, pledges, or transfers the interest sought to be disclaimed or contracts to do so; or

(c) a judicial sale of the interest sought to be disclaimed occurs.

(3) A disclaimer, in whole or part, of the future exercise of a power held in a fiduciary capacity is not barred by its previous exercise.

(4) A disclaimer, in whole or part, of the future exercise of a power not held in a fiduciary capacity is not barred by its previous exercise unless the power is exercisable in favor of the disclaimant.

(5) A disclaimer is barred or limited if so provided by law other than [sections ~~47 through 63~~ 40 THROUGH 56].

(6) A disclaimer of a power over property which is barred by this section is ineffective. A disclaimer of an interest in property which is barred by this section takes effect as a transfer of the interest disclaimed to the persons who would have taken the interest under [sections ~~47 through 63~~ 40 THROUGH 56] had the disclaimer not been barred.

NEW SECTION. Section 53. Tax qualified disclaimer. Notwithstanding any other provision of [sections ~~47 through 63~~ 40 THROUGH 56], if as a result of a disclaimer or transfer the disclaimed or transferred interest is treated pursuant to the provisions of Title 26 of the United States Code, as now or hereafter amended, or any

1 successor statute thereto, and the regulations promulgated thereunder, as never having been transferred to the
2 disclaimant, then the disclaimer or transfer is effective as a disclaimer under [sections ~~47 through 63~~ 40 THROUGH
3 56].

4
5 **NEW SECTION. Section 54. Recording of disclaimer.** If an instrument transferring an interest in or
6 power over property subject to a disclaimer is required or permitted by law to be filed, recorded, or registered,
7 the disclaimer may be so filed, recorded, or registered. Except as otherwise provided in [section ~~58(7)(b)~~
8 51(7)(B)], failure to file, record, or register the disclaimer does not affect its validity as between the disclaimant
9 and persons to whom the property interest or power passes by reason of the disclaimer.

10
11 **NEW SECTION. Section 55. Application to existing relationships.** Except as otherwise provided in
12 [section ~~59~~ 52], an interest in or power over property existing on [the effective date of this act] as to which the time
13 for delivering or filing a disclaimer under law superseded by [sections ~~47 through 63~~ 40 THROUGH 56] has not
14 expired may be disclaimed after [the effective date of this act].

15
16 **NEW SECTION. Section 56. Relation to electronic signatures in global and national commerce**
17 **act.** [Sections ~~47 through 63~~ 40 THROUGH 56] modifies, limits, and supersedes the federal Electronic Signatures
18 in Global and National Commerce Act (15 U.S.C. 7001, et seq.) but does not modify, limit, or supersede section
19 101(c) of that act (15 U.S.C. 7001(c)) or authorize electronic delivery of any of the notices described in section
20 103(b) of that act (15 U.S.C. 7003(b)).

21
22 **Section 57.** Section 72-3-102, MCA, is amended to read:

23 **"72-3-102. Necessity of order of probate of will.** Except as provided in 72-3-1101, to be effective to
24 prove the transfer of any property or to nominate an executor, a will must be declared to be valid by an order of
25 informal probate by the clerk or an adjudication of probate by the court."

26
27 ~~**NEW SECTION. Section 65. Proceedings affecting devolution and administration -- jurisdiction**~~
28 ~~**of subject matter.** The court may hear and determine formal proceedings involving administration and~~
29 ~~distribution of decedents' estates after notice to interested persons in conformity with 72-1-301. Persons notified~~
30 ~~are bound though less than all interested persons may have been given notice.~~

1
2 **Section 58.** Section 72-3-112, MCA, is amended to read:

3 **"72-3-112. Venue for estate proceedings.** (1) Venue for the first informal or formal testacy or
4 appointment proceedings after a decedent's death is:

5 (a) in the county where the decedent had the decedent's domicile at the time of death; or

6 (b) if the decedent was not domiciled in this state, in any county where property of the decedent was
7 located at the time of death.

8 (2) Venue for all subsequent proceedings within the exclusive jurisdiction of the court is in the place
9 where the initial proceeding occurred unless the initial proceeding has been transferred as provided in 72-1-203
10 or subsection (3) of this section.

11 (3) If the first proceeding was informal, on application of an interested person and after notice to the
12 proponent in the first proceeding, the court, upon finding that venue is elsewhere, may transfer the proceeding
13 and the file to the other court.

14 (4) For the purpose of aiding determinations concerning location of assets which may be relevant in
15 cases involving non-domiciliaries, a debt, other than one evidenced by investment or commercial paper or other
16 instrument in favor of a non-domiciliary is located where the debtor resides or, if the debtor is a person other than
17 an individual, at the place where it has its principal office. Commercial paper, investment paper, and other
18 instruments are located where the instrument is. An interest in property held in trust is located where the trustee
19 may be sued."

20
21 **Section 59.** Section 72-3-122, MCA, is amended to read:

22 **"72-3-122. Time limit on probate, testacy, and appointment proceedings -- exceptions.** (1) No
23 informal probate or appointment proceeding or formal testacy or appointment proceeding, other than a proceeding
24 to probate a will previously probated at the testator's domicile and appointment proceedings relating to an estate
25 in which there has been a prior appointment, may be commenced more than 3 years after the decedent's death,
26 except:

27 (a) if a previous proceeding was dismissed because of doubt about the fact of the decedent's death,
28 appropriate probate, appointment, or testacy proceedings may be maintained at any time thereafter upon a
29 finding that the decedent's death occurred prior to the initiation of the previous proceeding and the applicant or
30 petitioner has not delayed unduly in initiating the subsequent proceeding;

(b) appropriate probate, appointment, or testacy proceedings may be maintained in relation to the estate of an absent, disappeared, or missing person for whose estate a conservator has been appointed at any time within 3 years after the conservator becomes able to establish the death of the protected person;

(c) a proceeding to contest an informally probated will and to secure appointment of the person with legal priority for appointment in the event the contest is successful may be commenced within the later of 12 months from the informal probate or 3 years from the decedent's death;

(d) an informal appointment or a formal testacy or appointment proceeding may be commenced ~~after the time period~~ thereafter, if no proceedings concerning the succession or estate administration have occurred within the 3-year period after the decedent's death, but the personal representative has no right to possess estate assets provided in 72-3-606 beyond that necessary to confirm title to the property in the successors to the estate, and claims other than expenses of administration may not be presented against the estate; and

(e) a formal testacy proceeding may be commenced at any time after 3 years from the decedent's death for the purpose of establishing an instrument to direct or control the ownership of property passing or distributable after the decedent's death from one other than the decedent when the property is to be appointed by the terms of the decedent's will or is to pass or be distributed as a part of the decedent's estate or its transfer is otherwise to be controlled by the terms of the decedent's will.

(2) These limitations do not apply to proceedings to construe probated wills or determine heirs of an intestate.

(3) In cases under subsection (1)(a) or (1)(b), the date on which a testacy or appointment proceeding is properly commenced shall be deemed to be the date of the decedent's death for purposes of other limitations provisions of this code which relate to the date of death."

Section 60. Section 72-3-131, MCA, is amended to read:

"72-3-131. ~~Compromise of controversies~~ Effect of approval of agreements involving trusts, inalienable interests, or interests of third persons. (1) A compromise of any controversy as to admission to probate of any instrument offered for formal probate as the will of a decedent, the construction, validity, or effect of any governing instrument, the rights or interests in the estate of the decedent, of any successor, or the administration of the estate, if approved in a formal proceeding in the court for that purpose, is binding on all the parties to the proceeding, including those unborn, unascertained, or who could not be located.

(2) An approved compromise is binding even though it may affect a trust or an inalienable interest. A

1 compromise does not impair the rights of creditors or of taxing authorities who are not parties to it."

3 **Section 61.** Section 72-3-201, MCA, is amended to read:

4 **"72-3-201. Applications to be verified.** Applications for informal probate or informal appointment must
5 be directed to the clerk and verified by the applicant to be accurate and complete to the best of the applicant's
6 knowledge and belief as to the information required by 72-3-202 through 72-3-205. By verifying an application
7 for informal probate or informal appointment, the applicant submits personally to the jurisdiction of the court in
8 any proceeding for relief from fraud relating to the application, or for perjury, that may be instituted against the
9 applicant."

11 **Section 62.** Section 72-3-202, MCA, is amended to read:

12 **"72-3-202. Required contents of application.** Every application for informal probate of a will or for
13 informal appointment of a personal representative, other than a special, ancillary, or successor representative,
14 must contain the following:

15 (1) a statement of the interest of the applicant;

16 (2) the name and date of death of the decedent, the decedent's age, and the county and state of the
17 decedent's domicile at the time of death and the names and addresses of the spouse, children, heirs, and
18 devisees and the ages of any who are minors so far as known or ascertainable with reasonable diligence by the
19 applicant;

20 (3) if the decedent was not domiciled in the state at the time of death, a statement showing venue;

21 (4) a statement identifying and indicating the address of any personal representative of the decedent
22 appointed in this state or elsewhere whose appointment has not been terminated;

23 (5) a statement indicating whether the applicant has received a demand for notice or is aware of any
24 demand for notice of any probate or appointment proceeding concerning the decedent that may have been filed
25 in this state or elsewhere; and

26 (6) that the time limit for informal probate or appointment as provided in this chapter has not expired either
27 because 3 years or less have passed since the decedent's death, or, if more than 3 years from death have
28 passed, circumstances as described by 72-3-122 have occurred authorizing tardy probate or appointment."

30 **Section 63.** Section 72-3-203, MCA, is amended to read:

"72-3-203. Probate and appointment under will -- additional information required. (1) An application

for informal probate of a will must state the following in addition to the statements required by 72-3-202:

(a) that the original of the decedent's last will is in the possession of the court or accompanies the application, that an authenticated copy of a will probated in another jurisdiction accompanies the application, or that an authenticated copy of a will filed without probate in another jurisdiction and proved, as provided in 72-3-220, accompanies the application;

(b) that the applicant to the best of the applicant's knowledge believes the will to have been validly executed;

(c) that after the exercise of reasonable diligence, the applicant is unaware of any instrument revoking the will and that the applicant believes that the instrument that is the subject of the application is the decedent's last will;

~~—— (d) that the time limit for informal probate, as provided in this chapter, has not expired either because 3 years or less have passed since the decedent's death or, if more than 3 years from death have passed, that circumstances as described by 72-3-122 authorizing tardy probate have occurred.~~

(2) An application for informal appointment of a personal representative to administer an estate under a will must describe the will by date of execution and state the time and place of probate or the pending application or petition for probate. The application for appointment must adopt the statements in the application or petition for probate and state the name, address, and priority for appointment of the person whose appointment is sought."

NEW SECTION. Section 64. Formal testacy proceedings -- contested cases. In a contested case in which the proper execution of a will is at issue, the following rules apply:

(1) If the will is self-proved pursuant to 72-2-524, the will satisfies the requirements for execution without the testimony of any attesting witness, upon filing the will and the acknowledgment and affidavits annexed or attached to it, unless there is evidence of fraud or forgery affecting the acknowledgment or affidavit.

(2) If the will is witnessed pursuant to 72-2-522(1), but not self-proved, the testimony of at least one of the attesting witnesses is required to establish proper execution if the witness is within this state, competent, and able to testify. Proper execution may be established by other evidence, including an affidavit of an attesting witness. An attestation clause that is signed by the attesting witnesses raises a rebuttable presumption that the events recited in the clause occurred.

1
2 **Section 65.** Section 72-3-401, MCA, is amended to read:

3 **"72-3-401. Supervised administration -- nature and purpose -- presumptive entitlement. (1)**

4 Supervised administration is a single in rem proceeding to secure complete administration and settlement of a
5 decedent's estate under the continuing authority of the court, which extends until entry of an order approving
6 distribution of the estate and discharging the personal representative ~~or other order terminating the proceeding.~~
7 or other order terminating the proceeding. A supervised personal representative is responsible to the court, as
8 well as to the interested parties, and is subject to directions concerning the estate made by the court on its own
9 motion or on the motion of any interested party. Except as otherwise provided in this part, or as otherwise
10 ordered by the court, a supervised personal representative has the same duties and powers as a personal
11 representative who is not supervised.

12 ~~(2) If a probate estate has not been closed within 3 years after the first appointment of a personal~~
13 ~~representative or administrator, any devisee under a will, beneficiary of a trust, or intestate heir of the decedent~~
14 ~~is entitled to petition for supervised administration under this section and is presumptively entitled to receive an~~
15 ~~order for supervised administration. The burden of proof to show cause why supervised administration should~~
16 ~~not be granted is on the personal representative or administrator."~~

17
18 **Section 66.** Section 72-3-404, MCA, is amended to read:

19 **"72-3-404. Powers and duties of personal representative in supervised administration. (1)** ~~A~~

20 ~~supervised personal representative is responsible to the court, as well as to the interested parties, and is subject~~
21 ~~to directions concerning the estate made by the court on its own motion or on the motion of any interested party.~~

22 ~~———(2) Except as otherwise provided in this part or as otherwise ordered by the court, a supervised personal~~
23 ~~representative has the same duties and powers as a personal representative who is not supervised.~~

24 ~~———(3) Unless restricted by the court, a supervised personal representative has, without interim orders~~
25 ~~approving exercise of a power, all powers of personal representatives under this code, but the personal~~
26 ~~representative may not exercise the power to make any distribution of the estate without prior order of the court.~~
27 ~~Any other restriction on the power of a personal representative that may be ordered by the court must be~~
28 ~~endorsed on the personal representative's letters of appointment and unless so endorsed is ineffective as to~~
29 ~~persons dealing in good faith with the personal representative."~~

1 **Section 67.** Section 72-3-502, MCA, is amended to read:

2 **"72-3-502. Priorities for appointment.** Whether the proceedings are formal or informal, persons who
3 are not disqualified have priority for appointment in the following order:

4 (1) the person with priority as determined by a probated will, including a person nominated by a power
5 conferred in a will;

6 (2) the surviving spouse of the decedent who is a devisee of the decedent;

7 (3) the custodial parent of a minor decedent;

8 (4) other devisees of the decedent;

9 (5) the surviving spouse of the decedent;

10 (6) the parent of an adult decedent who was survived by issue, none of whom is an adult;

11 ~~(6)~~(7) other heirs of the decedent;

12 ~~(7)~~(8) public administrator;

13 ~~(8)~~(9) 45 days after the death of the decedent, any creditor."
14

15 **Section 68.** Section 72-3-504, MCA, is amended to read:

16 **"72-3-504. Renunciation -- nomination of other -- two or more persons sharing priority.** (1) A
17 person entitled to letters under 72-3-502(2) through ~~(6)~~ (7) may nominate a qualified person to act as personal
18 representative.

19 (2) Any person entitled to letters may renounce the person's right to nominate or to an appointment by
20 appropriate writing filed with the court.

21 (3) When two or more persons share a priority, those of them who do not renounce shall concur in
22 nominating another to act for them or in applying for appointment. If they are unable to concur in nominating
23 another to act for them or in applying for appointment, the court may appoint any qualified person."
24

25 **Section 69.** Section 72-3-514, MCA, is amended to read:

26 **"72-3-514. Demand for bond by interested person.** (1) Any person apparently having an interest in
27 the estate worth in excess of ~~\$1,000~~ \$5,000 or any creditor having a claim in excess of ~~\$1,000~~ \$5,000 may make
28 a written demand that a personal representative give bond. The demand must be filed with the clerk and a copy
29 mailed to the personal representative, if appointment and qualification have occurred. Upon filing of the demand,
30 bond is required, but the requirement ceases if the person demanding bond ceases to be interested in the estate

1 or if bond is excused as provided in 72-3-513 or 72-3-515.

2 (2) After the personal representative has received notice and until the filing of the bond or cessation of
3 the requirement of bond, the personal representative shall refrain from exercising any powers of the personal
4 representative's office except as necessary to preserve the estate.

5 (3) Failure of the personal representative to meet a requirement of bond by giving suitable bond within
6 30 days after receipt of notice is cause for removal and appointment of a successor personal representative."

7
8 **Section 70.** Section 72-3-607, MCA, is amended to read:

9 **"72-3-607. Inventory -- appraisal.** (1) Within 9 months after appointment, a personal representative who
10 is not a special administrator or a successor to another representative who has previously discharged this duty
11 shall prepare an inventory of property owned by the decedent at the time of the decedent's death, listing the
12 inventory of property with reasonable detail and indicating for each listed item its fair market value as of the date
13 of the decedent's death and the type and amount of any encumbrance that may exist with reference to the item.

14 (2) The inventory must include a statement of the ~~full and true~~ fair market value of the decedent's interest
15 in every item listed in the inventory. The personal representative may ~~appoint one or more~~ employ a qualified and
16 disinterested ~~persons appraiser~~ appraiser to assist the personal representative in ascertaining the fair market value as of
17 the date of the decedent's death of ~~all assets included in the estate~~ any asset the value of which may be subject
18 to reasonable doubt. Different persons may be employed to appraise different kinds of assets included in the
19 estate. The names and addresses of any ~~appraisers~~ appraiser must be indicated on the inventory with the item
20 or items appraised.

21 (3) The personal representative shall:

22 (a) send a copy of the inventory to ~~interested persons~~ the following who request it: heirs, devisees, and
23 creditors with allowed claims that have not been satisfied; or

24 (b) file the original of the inventory with the court and send a copy of the inventory to interested persons
25 who request it."

26
27 **Section 71.** Section 72-3-611, MCA, is amended to read:

28 **"72-3-611. No surcharge for authorized acts generally -- limitation.** (1) A personal representative
29 may not be surcharged for acts of administration or distribution if the conduct in question was authorized at the
30 time. Subject to other obligations of administration and of this code, an informally probated will is authority to

1 administer and distribute the estate according to its terms. Subject to the provisions of this code, an order of
2 appointment of a personal representative, whether issued in informal or formal proceedings, is authority to
3 distribute apparently intestate assets to the heirs of the decedent if, at the time of distribution, the personal
4 representative is not aware of a pending testacy proceeding, a proceeding to vacate an order entered in an earlier
5 testacy proceeding, a formal proceeding questioning the personal representative's appointment or fitness to
6 continue, or a supervised administration proceeding.

7 (2) This section does not affect the duty of the personal representative to administer and distribute the
8 estate in accordance with the rights of claimants whose claims have been allowed, the surviving spouse, any
9 minor and dependent children, and any pretermitted child of the decedent as described elsewhere in this code."

10
11 **Section 72.** Section 72-3-613, MCA, is amended to read:

12 **"72-3-613. Transactions authorized for personal representative.** Except as restricted by this code
13 or otherwise provided by the will or by an order in a formal proceeding and subject to the priorities stated in
14 72-3-901, a personal representative, acting reasonably for the benefit of the interested persons, may properly:

15 (1) retain assets owned by the decedent pending distribution or liquidation, including those in which the
16 representative is personally interested or which are otherwise improper for trust investment;

17 (2) receive assets from fiduciaries or other sources;

18 (3) perform, compromise, or refuse performance of the decedent's contracts that continue as obligations
19 of the estate, as the personal representative may determine under the circumstances. In performing enforceable
20 contracts by the decedent to convey or lease land, the personal representative, among other possible courses
21 of action, may:

22 (a) execute and deliver a deed of conveyance for cash payment of all sums remaining due or the
23 purchaser's note for the sum remaining due secured by a mortgage or deed of trust on the land; or

24 (b) deliver a deed in escrow with directions that the proceeds, when paid in accordance with the escrow
25 agreement, be paid to the successors of the decedent, as designated in the escrow agreement;

26 (4) satisfy written charitable pledges of the decedent irrespective of whether the pledges constituted
27 binding obligations of the decedent or were properly presented as claims, if in the judgment of the personal
28 representative the decedent would have wanted the pledges completed under the circumstances;

29 (5) if funds are not needed to meet debts and expenses currently payable and are not immediately
30 distributable, deposit or invest liquid assets of the estate, including money received from the sale of other assets,

1 in federally insured interest-bearing accounts, readily marketable secured loan arrangements, or other prudent
2 investments that would be reasonable for use by trustees generally. If the personal representative is authorized
3 to invest funds in United States obligations, the personal representative may invest in these obligations either
4 directly or in the form of securities of or other interests in an open-end or closed-end management type
5 investment company or investment trust registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1
6 through 80a-64), as amended, if:

7 (a) the portfolio of the investment company or investment trust is limited to United States government
8 obligations and repurchase agreements fully collateralized by United States government obligations; and

9 (b) the investment company or investment trust takes delivery of the collateral for any repurchase
10 agreement, either directly or through an authorized custodian.

11 (6) acquire or dispose of an asset, including land in this or another state, for cash or on credit, at public
12 or private sale and manage, develop, improve, exchange, partition, change the character of, or abandon an estate
13 asset;

14 (7) make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any
15 improvements, raze existing or erect new party walls or buildings;

16 (8) subdivide, develop, or dedicate land to public use; make or obtain the vacation of plats and adjust
17 boundaries; adjust differences in valuation on exchange or partition by giving or receiving considerations; or
18 dedicate easements to public use without consideration;

19 (9) enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew,
20 for a term within or extending beyond the period of administration;

21 (10) enter into a lease or arrangement for exploration and removal of minerals or other natural resources
22 or enter into a pooling or unitization agreement;

23 (11) ~~with the consent of the heirs or devisees or the court,~~ abandon property when in the opinion of the
24 personal representative it is valueless or is so encumbered or is in condition that it is of no benefit to the estate;

25 (12) vote stocks or other securities in person or by general or limited proxy;

26 (13) pay calls, assessments, and other sums chargeable or accruing against or on account of securities,
27 unless barred by the provisions relating to claims;

28 (14) hold a security in the name of a nominee or in other form without disclosure of the interest of the
29 estate, but the personal representative is liable for any act of the nominee in connection with the security so held;

30 (15) insure the assets of the estate against damage, loss, and liability and the personal representative

1 against liability as to third persons;

2 (16) borrow money with or without security to be repaid from the estate assets or otherwise and advance
3 money for the protection of the estate;

4 (17) ~~with the consent of the heirs or devisees or the court,~~ effect a fair and reasonable compromise with
5 any debtor or obligor or extend, renew, or in any manner modify the terms of any obligation owing to the estate.
6 If the personal representative holds a mortgage, pledge, or other lien upon property of another person, the
7 personal representative may, in lieu of foreclosure, accept a conveyance or transfer of encumbered assets from
8 the owner thereof in satisfaction of the indebtedness secured by lien.

9 (18) pay taxes, assessments, compensation of the personal representative, and other expenses incident
10 to the administration of the estate;

11 (19) sell or exercise stock subscription or conversion rights; consent, directly or through a committee or
12 other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other
13 business enterprise;

14 (20) allocate items of income or expense to either estate income or principal, as permitted or provided
15 by law;

16 (21) employ persons, including attorneys, auditors, investment advisors, or agents, even if they are
17 associated with the personal representative, to advise or assist the personal representative in the performance
18 of the personal representative's administrative duties; act without independent investigation upon their
19 recommendations; and, instead of acting personally, employ one or more agents to perform any act of
20 administration, whether or not discretionary;

21 (22) prosecute or defend claims or proceedings in any jurisdiction for the protection of the estate and of
22 the personal representative in the performance of the personal representative's duties;

23 (23) sell, mortgage, or lease any real or personal property of the estate or any interest therein for cash,
24 credit, or for part cash and part credit and with or without security for unpaid balances; ~~provided, however, a~~
25 ~~personal representative may not, without prior court approval in a supervised proceeding, either directly or~~
26 ~~indirectly purchase any property of the estate that the personal representative represents, nor be interested in~~
27 ~~the sale. All sales must be fairly conducted and made for the best price obtainable.~~

28 (24) continue any unincorporated business or venture in which the decedent was engaged at the time
29 of death in the same business form, including a sole proprietorship, partnership, or limited liability company,
30 unless otherwise ordered by the court in a formal proceeding initiated by an interested person on the basis that

1 continuation of the business is not in the best interests of the estate or its beneficiaries;

2 (25) incorporate any business or venture in which the decedent was engaged at the time of death;

3 (26) satisfy and settle claims and distribute the estate as provided in this code."

4
5 **NEW SECTION. Section 73. Powers of personal representatives in general.** (1) Until termination
6 of his appointment a personal representative has the same power over the title to property of the estate that an
7 absolute owner would have, in trust however, for the benefit of the creditors and others interested in the estate.
8 This power may be exercised without notice, hearing, or order of court.

9 (2) A personal representative has access to and authority over a digital asset of the decedent to the
10 extent provided by the Revised Uniform Fiduciary Access to Digital Assets Act or by order of court.

11
12 **Section 74.** Section 72-3-618, MCA, is amended to read:

13 **"72-3-618. Persons dealing with personal representative -- protection.** (1) A person who in good
14 faith and without notice either assists a personal representative or deals with a personal representative for value
15 is protected as if the personal representative properly exercised the personal representative's power. The fact
16 that a person knowingly deals with a personal representative does not alone require the person to inquire into
17 the existence of a power or the propriety of its exercise. Except for restrictions on powers of supervised personal
18 representatives that are endorsed on letters as provided in ~~72-3-404(3)~~ 72-3-404, a provision in any will or order
19 of court purporting to limit the power of a personal representative is not effective except as to persons with actual
20 knowledge of the provision.

21 (2) A person is not bound to see to the proper application of estate assets paid or delivered to a personal
22 representative.

23 (3) The protection expressed in this section extends to instances in which some procedural irregularity
24 or jurisdictional defect occurred in proceedings leading to the issuance of letters, including a case in which the
25 alleged decedent is found to be alive. The protection expressed in this section is not a substitution for that
26 provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers
27 of securities by fiduciaries."

28
29 **Section 75.** Section 72-3-631, MCA, is amended to read:

30 **"72-3-631. Compensation of personal representative.** (1) A personal representative is entitled to

reasonable compensation for services. ~~The compensation may not exceed 3% of the first \$40,000 of the value of the estate as reported for federal estate tax purposes and 2% of the value of the estate in excess of \$40,000 as reported for federal estate tax purposes. However, a personal representative is entitled to a minimum compensation of the lesser of \$100 or the value of the gross estate.~~

~~———— (2) In proceedings conducted for the termination of joint tenancies, the compensation of the personal representative may not exceed 2% of the interest passing.~~

~~———— (3) In proceedings conducted for the termination of a life estate, the compensation allowed the personal representative may not exceed 2% of the value of the life estate if it is terminated in connection with a probate or joint tenancy termination. If a life estate is terminated separately, the personal representative's compensation may not exceed 2% of the value of the estate, except that it may not be less than \$100.~~

~~———— (4) If there is more than one personal representative, only one compensation is allowed.~~

~~———— (5) The court may allow additional compensation for extraordinary services. The additional compensation may not be greater than the amount that is allowed for the original compensation.~~

~~(6)(2) If the will provides for the compensation of the personal representative and there is no contract with the decedent regarding compensation, the personal representative may renounce the provision before qualifying and be entitled to compensation under the terms of this section. A personal representative also may renounce the right to all or any part of the compensation. A written renunciation of fee may be filed with the court."~~

Section 76. Section 72-3-803, MCA, is amended to read:

"72-3-803. Nonclaim -- limitations on presentation of claims -- exceptions. (1) All claims against a decedent's estate that arose before the death of the decedent, including claims of the state and any subdivision of the state, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by other statute of limitations, are barred against the estate, the personal representative, and the heirs and devisees and nonprobate transferees of the decedent unless presented within the earlier of the following time limitations:

(a) within 1 year after the decedent's death; or

(b) within the time provided by 72-3-801(2) for creditors who are given actual notice and within the time provided in 72-3-801(1) for all creditors barred by publication.

~~(2) However, claims~~ A claim described in subsection (1) which is barred by the nonclaim statute at the decedent's domicile before the giving of notice to creditors in this state ~~are also~~ is barred in this state.

1 ~~(2)~~(3) All claims against a decedent's estate that arise at or after the death of the decedent, including
2 claims of the state and any subdivision of the state, whether due or to become due, absolute or contingent,
3 liquidated or unliquidated, founded on contract, tort, or other legal basis, are barred against the estate, the
4 personal representative, and the heirs and devisees of the decedent unless presented as follows:

5 (a) a claim based on a contract with the personal representative, within 4 months after performance by
6 the personal representative is due;

7 (b) any other claim, within the later of 4 months after it arises or the time specified in subsection (1)(a).

8 ~~(3)~~(4) This section does not affect or prevent:

9 (a) any proceeding to enforce any mortgage, pledge, or other lien upon property of the estate;

10 (b) to the limits of the insurance protection only, any proceeding to establish liability of the decedent or
11 the personal representative for which the decedent or the personal representative is protected by liability
12 insurance; or

13 (c) collection of compensation for services rendered and reimbursement for expenses advanced by the
14 personal representative or by the attorney or accountant for the personal representative of the estate."
15

16 **Section 77.** Section 72-3-815, MCA, is amended to read:

17 **"72-3-815. Compromise of claims.** When a claim against the estate has been presented in any
18 manner, the personal representative ~~with the consent of the heirs or devisees or the court~~ may, if it appears for
19 the best interest of the estate, compromise the claim, whether due or not due, absolute or contingent, liquidated
20 or unliquidated."
21

22 **Section 78.** Section 72-3-917, MCA, is amended to read:

23 **"72-3-917. Distribution to person under disability.** (1) A personal representative may discharge the
24 personal representative's obligation to distribute to any person under legal disability by distributing in a manner
25 expressly provided in the will.

26 (2) Unless contrary to an express provision in the will, the personal representative may discharge the
27 personal representative's obligation to distribute to a minor or person under other disability as authorized by
28 72-5-104 or any other statute. If the personal representative knows that a conservator has been appointed or that
29 a proceeding for appointment of a conservator is pending, the personal representative is authorized to distribute
30 only to the conservator.

(3) (a) If the heir or devisee is under disability other than minority, the personal representative is authorized to distribute to:

(i) an attorney-in-fact who has authority under a power of attorney to receive property for that person; or

(ii) the spouse, parent, or other close relative with whom the person under disability resides if the distribution is of amounts not exceeding \$10,000 a year or property not exceeding ~~\$10,000~~ \$50,000 in value, unless the court authorizes a larger amount or greater value.

(b) Any person receiving money or property for the disabled person is obligated to apply the money or property to the support of the disabled person, but the receiving person may not accept any pay except by way of reimbursement for out-of-pocket expenses for goods and services necessary for the support of the disabled person. Excess sums must be preserved for future support of the disabled person. The personal representative is not responsible for the proper application of money or property distributed pursuant to this subsection (3)."

Section 79. Section 72-3-1012, MCA, is amended to read:

"72-3-1012. Liability of distributees to claimants. (1) After assets of an estate have been distributed and subject to 72-3-1013, an undischarged claim that is not barred may be prosecuted in a proceeding against one or more distributees. ~~A distributee is not liable to claimants~~ No distributee shall be liable to claimants for amounts received as exempt property, homestead or family allowances, or for amounts in excess of the value of the distributee's distribution as of the time of distribution or for amounts in excess of the value of the distributee's distribution as of the time of distribution.

(2) As between distributees, each shall bear the cost of satisfaction of unbarred claims as if the claim had been satisfied in the course of administration. Any distributee who fails to notify other distributees of the demand made upon the distributee by the claimant in sufficient time to permit them to join in any proceeding in which the claim was asserted against the distributee loses the right of contribution against other distributees."

Section 80. Section 72-3-1013, MCA, is amended to read:

"72-3-1013. Limitation on actions against distributees. (1) Unless previously adjudicated in a formal testacy proceeding or in a proceeding settling the accounts of a personal representative or otherwise barred, the claim of any claimant to recover from a distributee who is liable to pay the claim and the right of any heir or devisee or of a successor personal representative acting in their behalf to recover property improperly distributed

1 or the value thereof from any distributee is forever barred at the later of 3 years after the decedent's death or 1
2 year after the time of distribution ~~thereof~~, but all claims of creditors of the decedent are barred 1 year after the
3 decedent's death.

4 (2) This section does not bar an action to recover property or value received as the result of fraud."
5

6 **Section 81.** Section 72-4-203, MCA, is amended to read:

7 **"72-4-203. Service on foreign personal representative.** (1) Service of process may be made upon
8 the foreign personal representative by registered or certified mail addressed to the foreign personal
9 representative's last reasonably ascertainable address requesting a return receipt signed by addressee only.
10 Notice by ordinary first-class mail is sufficient if registered or certified mail service to the addressee is unavailable.
11 Service may be made upon a foreign personal representative in the manner in which service could have been
12 made under other laws of this state on either the foreign personal representative or the foreign personal
13 representative's decedent immediately prior to death.

14 (2) If service is made upon a foreign personal representative as provided in subsection (1), the foreign
15 personal representative must be allowed at least 30 days within which to appear or respond."
16

17 **Section 82.** Section 72-6-111, MCA, is amended to read:

18 **"72-6-111. Nonprobate transfers on death.** (1) A provision for a nonprobate transfer on death in an
19 insurance policy, contract of employment, bond, mortgage, promissory note, certificated or uncertificated security,
20 account agreement, custodial agreement, deposit agreement, compensation plan, pension plan, individual
21 retirement plan, employee benefit plan, trust, conveyance, deed of gift, ~~beneficiary~~ transfer on death deed, as
22 defined in ~~72-6-121~~ [section 94 86], marital property agreement, or other written instrument of a similar nature
23 is nontestamentary. This subsection includes a written provision that:

24 (a) money or other benefits due to, controlled by, or owned by a decedent before death must be paid
25 after the decedent's death to a person whom the decedent designates either in the instrument or in a separate
26 writing, including a will, executed either before or at the same time as the instrument or later;

27 (b) money due or to become due under the instrument ceases to be payable in the event of death of the
28 promisee or the promisor before payment or demand; or

29 (c) any property controlled by or owned by the decedent before death that is the subject of the instrument
30 passes to a person the decedent designates either in the instrument or in a separate writing, including a will,

1 executed either before or at the same time as the instrument or later.

2 (2) This section does not limit rights of creditors under other laws of this state."

3
4 NEW SECTION. **Section 83. Liability of nonprobate transferees for creditor claims and statutory**

5 **allowances.** (1) In this section, "nonprobate transfer" means a valid transfer effective at death, other than a
6 transfer of a survivorship interest in a joint tenancy of real estate, by a transferor whose last domicile was in this
7 state to the extent that the transferor immediately before death had power, acting alone, to prevent the transfer
8 by revocation or withdrawal and instead to use the property for the benefit of the transferor or apply it to discharge
9 claims against the transferor's probate estate.

10 (2) Except as otherwise provided by statute, a transferee of a nonprobate transfer is subject to liability
11 to any probate estate of the decedent for allowed claims against decedent's probate estate and statutory
12 allowances to the decedent's spouse and children to the extent the estate is insufficient to satisfy those claims
13 and allowances. The liability of a nonprobate transferee may not exceed the value of nonprobate transfers
14 received or controlled by that transferee.

15 (3) Nonprobate transferees are liable for the insufficiency described in subsection (2) in the following
16 order of priority:

17 (a) a transferee designated in the decedent's will or any other governing instrument, as provided in the
18 instrument;

19 (b) the trustee of a trust serving as the principal nonprobate instrument in the decedent's estate plan as
20 shown by its designation as devisee of the decedent's residuary estate or by other facts or circumstances, to the
21 extent of the value of the nonprobate transfer received or controlled;

22 (c) other nonprobate transferees, in proportion to the values received.

23 (4) Unless otherwise provided by the trust instrument, interests of beneficiaries in all trusts incurring
24 liabilities under this section abate as necessary to satisfy the liability, as if all of the trust instruments were a single
25 will and the interests were devised under it.

26 (5) A provision made in one instrument may direct the apportionment of the liability among the nonprobate
27 transferees taking under that or any other governing instrument. If a provision in one instrument conflicts with
28 a provision in another, the later one prevails.

29 (6) Upon due notice to a nonprobate transferee, the liability imposed by this section is enforceable in
30 proceedings in this state, whether or not the transferee is located in this state.

(7) A proceeding under this section may not be commenced unless the personal representative of the decedent's estate has received a written demand for the proceeding from the surviving spouse or a child, to the extent that statutory allowances are affected, or a creditor. If the personal representative declines or fails to commence a proceeding after demand, a person making demand may commence the proceeding in the name of the decedent's estate, at the expense of the person making the demand and not of the estate. A personal representative who declines in good faith to commence a requested proceeding incurs no personal liability for declining.

(8) A proceeding under this section must be commenced within 1 year after the decedent's death, but a proceeding on behalf of a creditor whose claim was allowed after proceedings challenging disallowance of the claim may be commenced within 60 days after final allowance of the claim.

(9) Unless a written notice asserting that a decedent's probate estate is nonexistent or insufficient to pay allowed claims and statutory allowances has been received from the decedent's personal representative, the following rules apply:

(a) Payment or delivery of assets by a financial institution, registrar, or other obligor, to a nonprobate transferee in accordance with the terms of the governing instrument controlling the transfer releases the obligor from all claims for amounts paid or assets delivered.

(b) A trustee receiving or controlling a nonprobate transfer is released from liability under this section with respect to any assets distributed to the trust's beneficiaries. Each beneficiary to the extent of the distribution received becomes liable for the amount of the trustee's liability attributable to assets received by the beneficiary.

Section 84. Section 72-6-213, MCA, is amended to read:

"72-6-213. Alteration of rights. (1) Rights at death under 72-6-212 are determined by the terms of the account at the death of a party.

(2) Except as provided in subsection (3) and unless otherwise agreed in writing between the parties to the account, the terms of an account may be altered by written notice given by a party to the financial institution to change the terms of account or to stop or vary payment under the terms of the account. The notice must be signed by a party and received by the financial institution during the party's lifetime.

(3) A financial institution may, in its discretion, refuse to honor a request for alteration of rights that would change:

(a) the financial institution's obligations or rights under the contract of deposit; or

(b) the parties to a multiple-party account if the request is not signed by all of the parties to the account, unless all the parties executed a Multiple-Party Account Form under 72-6-204 that expressly indicates that account terms may be changed by a single party.

(4) A right of survivorship arising from the express terms of the account, from 72-6-212, or from a POD designation may not be altered by will."

NEW SECTION. Section 85. Short title. [Sections ~~93 through 110~~ 85 THROUGH 102] may be cited as the "Uniform Real Property Transfer on Death Act".

NEW SECTION. Section 86. Definitions. As used in [sections ~~93 through 110~~ 85 THROUGH 102], the following definitions apply:

(1) "Beneficiary" means a person that receives property under a transfer on death deed.

(2) "Designated beneficiary" means a person designated to receive property in a transfer on death deed.

(3) "Joint owner" means an individual who owns property concurrently with one or more other individuals with a right of survivorship. The term includes a joint tenant. The term does not include a tenant in common.

(4) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(5) "Property" means an interest in real property located in this state which is transferable on the death of the owner.

(6) "Transfer on death deed" means a deed authorized under this part.

(7) "Transferor" means an individual who makes a transfer on death deed.

NEW SECTION. Section 87. Applicability. [Sections ~~93 through 110~~ 85 THROUGH 102] applies to a transfer on death deed made before, on, or after [the effective date of this act] by a transferor dying on or after [the effective date of this act].

NEW SECTION. Section 88. Nonexclusivity. [Section ~~93 through 110~~ 85 THROUGH 102] does not affect any method of transferring property otherwise permitted under the law of this state.

1 **NEW SECTION. Section 89. Transfer on death deed authorized.** An individual may transfer property
2 to one or more beneficiaries effective at the transferor's death by a transfer on death deed.

3
4 **NEW SECTION. Section 90. Transfer on death deed revocable.** A transfer on death deed is
5 revocable even if the deed or another instrument contains a contrary provision.

6
7 **NEW SECTION. Section 91. Transfer on death deed nontestamentary.** A transfer on death deed
8 is nontestamentary.

9
10 **NEW SECTION. Section 92. Capacity of transferor.** The capacity required to make or revoke a
11 transfer on death deed is the same as the capacity required to make a will.

12
13 **NEW SECTION. Section 93. Requirements.** A transfer on death deed:
14 (1) except as otherwise provided in subsection (2), must contain the essential elements and formalities
15 of a properly recordable inter vivos deed;
16 (2) must state that the transfer to the designated beneficiary is to occur at the transferor's death; and
17 (3) must be recorded before the transferor's death in the public records in the office of the county clerk
18 and recorder of the county where the property is located.

19
20 **NEW SECTION. Section 94. Notice, delivery, acceptance, consideration not required.** A transfer
21 on death deed is effective without:

22 (1) notice or delivery to or acceptance by the designated beneficiary during the transferor's life; or

23 (2) consideration.
24

25 **NEW SECTION. Section 95. Revocation by instrument authorized -- revocation by act not**
26 **permitted.** (1) Subject to subsection (2), an instrument is effective to revoke a recorded transfer on death deed,
27 or any part of it, only if the instrument:

28 (a) is one of the following:

29 (i) a transfer on death deed that revokes the deed or part of the deed expressly or by inconsistency;

30 (ii) an instrument of revocation that expressly revokes the deed or part of the deed;

(iii) an inter vivos deed that expressly revokes the transfer on death deed or part of the deed; and
(b) is acknowledged by the transferor after the acknowledgment of the deed being revoked and recorded before the transferor's death in the public records in the office of the county clerk and recorder of the county where the deed is recorded.

(2) If a transfer on death deed is made by more than one transferor:

(a) revocation by a transferor does not affect the deed as to the interest of another transferor; and

(b) a deed of joint owners is revoked only if it is revoked by all of the living joint owners.

(3) After a transfer on death deed is recorded, it may not be revoked by a revocatory act on the deed.

(4) This section does not limit the effect of an inter vivos transfer of the property, which revokes any prior transfer on death deed to the property.

NEW SECTION. Section 96. Effect of transfer on death deed during transferor's life. During a transferor's life, a transfer on death deed does not:

(1) affect an interest or right of the transferor or any other owner, including the right to transfer or encumber the property;

(2) affect an interest or right of a transferee, even if the transferee has actual or constructive notice of the deed;

(3) affect an interest or right of a secured or unsecured creditor or future creditor of the transferor, even if the creditor has actual or constructive notice of the deed;

(4) affect the transferor's or designated beneficiary's eligibility for any form of public assistance;

(5) create a legal or equitable interest in favor of the designated beneficiary; or

(6) subject the property to claims or process of a creditor of the designated beneficiary.

NEW SECTION. Section 97. Effect of transfer on death deed at transferor's death. (1) Except as otherwise provided in the transfer on death deed, in [section 94 83], or in this section, and subject to chapter 2, part 2, of this title, on the death of the transferor, the following rules apply to property that is the subject of a transfer on death deed and owned by the transferor at death:

(a) Subject to subsection (1)(b), the interest in the property is transferred to the designated beneficiary in accordance with the deed.

(b) The interest of a designated beneficiary is contingent on the designated beneficiary surviving the

transferor. The interest of a designated beneficiary that fails to survive the transferor lapses.

(c) Subject to subsection (1)(d), concurrent interests are transferred to the beneficiaries in equal and undivided shares with no right of survivorship.

(d) If the transferor has identified two or more designated beneficiaries to receive concurrent interests in the property, the share of one which lapses or fails for any reason is transferred to the other, or to the others in proportion to the interest of each in the remaining part of the property held concurrently.

(2) Subject to Title 70, chapter 21, a beneficiary takes the property subject to all conveyances, encumbrances, assignments, contracts, mortgages, liens, and other interests to which the property is subject at the transferor's death. For purposes of this subsection and Title 70, chapter 21, the recording of the transfer on death deed is deemed to have occurred at the transferor's death.

(3) If a transferor is a joint owner and is:

(a) survived by one or more other joint owners, the property that is the subject of a transfer on death deed belongs to the surviving joint owner or owners with right of survivorship; or

(b) the last surviving joint owner, the transfer on death deed is effective.

(4) A transfer on death deed transfers property without covenant or warranty of title even if the deed contains a contrary provision.

NEW SECTION. Section 98. Disclaimer. A beneficiary may disclaim all or part of the beneficiary's interest as provided by [sections 47 through 63 ~~40 THROUGH 56~~], the Uniform Disclaimer of Property Interests Act.

NEW SECTION. Section 99. Liability for creditor claims and statutory allowances. A beneficiary of a transfer on death deed is liable for an allowed claim against the transferor's probate estate and statutory allowances to a surviving spouse and children to the extent provided in [section 94 ~~83~~].

NEW SECTION. Section 100. Optional form of transfer on death deed. The following form may be used to create a transfer on death deed. The other sections of [sections 93 through 110 ~~85 THROUGH 102~~] govern the effect of this or any other instrument used to create a transfer on death deed:

(front of form)

REVOCABLE TRANSFER ON DEATH DEED

NOTICE TO OWNER

1 You should carefully read all information on the other side of this form. You May Want to Consult a Lawyer
2 Before Using This Form.

3 This form must be recorded before your death, or it will not be effective.

4 IDENTIFYING INFORMATION

5 Owner or Owners Making This Deed:

6 _____
7 Printed name Mailing address

8 _____
9 Printed name Mailing address

10 Legal description of the property:

11 _____
12 _____

13 PRIMARY BENEFICIARY

14 I designate the following beneficiary if the beneficiary survives me.

15 _____
16 Printed name Mailing address, if available

17 ALTERNATE BENEFICIARY - Optional

18 If my primary beneficiary does not survive me, I designate the following alternate beneficiary if that beneficiary
19 survives me.

20 _____
21 Printed name Mailing address, if available

22 TRANSFER ON DEATH

23 At my death, I transfer my interest in the described property to the beneficiaries as designated above.

24 Before my death, I have the right to revoke this deed.

25 SIGNATURE OF OWNER OR OWNERS MAKING THIS DEED

26 _____ [(SEAL)] _____

27 Signature Date

28 _____ [(SEAL)] _____

29 Signature Date

30 ACKNOWLEDGMENT

1 (insert acknowledgment for deed here)

2 (back of form)

3 COMMON QUESTIONS ABOUT THE USE OF THIS FORM

4 What does the Transfer on Death (TOD) deed do? When you die, this deed transfers the described property,
5 subject to any liens or mortgages (or other encumbrances) on the property at your death. Probate is not required.
6 The TOD deed has no effect until you die. You can revoke it at any time. You are also free to transfer the
7 property to someone else during your lifetime. If you do not own any interest in the property when you die, this
8 deed will have no effect.

9 How do I make a TOD deed? Complete this form. Have it acknowledged before a notary public or other individual
10 authorized by law to take acknowledgments. Record the form in each county where any part of the property is
11 located. The form has no effect unless it is acknowledged and recorded before your death.

12 Is the "legal description" of the property necessary? Yes.

13 How do I find the "legal description" of the property? This information may be on the deed you received when you
14 became an owner of the property. This information may also be available in the office of the county clerk and
15 recorder for the county where the property is located. If you are not absolutely sure, consult a lawyer.

16 Can I change my mind before I record the TOD deed? Yes. If you have not yet recorded the deed and want to
17 change your mind, simply tear up or otherwise destroy the deed.

18 How do I "record" the TOD deed? Take the completed and acknowledged form to the office of the county clerk
19 and recorder of the county where the property is located. Follow the instructions given by the county clerk and
20 recorder to make the form part of the official property records. If the property is in more than one county, you
21 should record the deed in each county.

22 Can I later revoke the TOD deed if I change my mind? Yes. You can revoke the TOD deed. No one, including
23 the beneficiaries, can prevent you from revoking the deed.

24 How do I revoke the TOD deed after it is recorded? There are three ways to revoke a recorded TOD deed:

25 (1) Complete and acknowledge a revocation form, and record it in each county where the property is
26 located.

27 (2) Complete and acknowledge a new TOD deed that disposes of the same property, and record it in
28 each county where the property is located.

29 (3) Transfer the property to someone else during your lifetime by a recorded deed that expressly revokes
30 the TOD deed. You may not revoke the TOD deed by will.

I am being pressured to complete this form. What should I do? Do not complete this form under pressure. Seek help from a trusted family member, friend, or lawyer.

Do I need to tell the beneficiaries about the TOD deed? No, but it is recommended. Secrecy can cause later complications and might make it easier for others to commit fraud.

I have other questions about this form. What should I do? This form is designed to fit some but not all situations.

If you have other questions, you are encouraged to consult a lawyer.

NEW SECTION. Section 101. Optional form of revocation. The following form may be used to create an instrument of revocation under [sections ~~93 through 110~~ 85 THROUGH 102]. The other sections of [sections ~~93 through 110~~ 85 THROUGH 102] govern the effect of this or any other instrument used to revoke a transfer on death deed.

(front of form)

REVOCATION OF TRANSFER ON DEATH DEED

NOTICE TO OWNER

This revocation must be recorded before you die or it will not be effective. This revocation is effective only as to the interests in the property of owners who sign this revocation.

IDENTIFYING INFORMATION

Owner or Owners of Property Making This Revocation:

Printed name

Mailing address

Printed name

Mailing address

Legal description of the property:

REVOCATION

I revoke all my previous transfers of this property by transfer on death deed.

SIGNATURE OF OWNER OR OWNERS MAKING THIS REVOCATION

_____ [(SEAL)] _____

Signature

~~"72-7-305. Permissible appointment. (1) A powerholder of a general power of appointment that permits appointment to the powerholder or the powerholder's estate may make any appointment, including an appointment in trust or creating a new power of appointment, that the powerholder could make in disposing of the powerholder's own property.~~

~~(2) A powerholder of a general power of appointment that permits appointment only to the creditors of the powerholder or of the powerholder's estate may appoint only to those creditors.~~

~~(3) Unless the terms of the instrument creating a power of appointment manifest a contrary intent, the powerholder of a nongeneral power may:~~

~~(a) make an appointment in any form, including an appointment in trust, in favor of a permissible appointee;~~

~~(b) create a general power in a permissible appointee; or~~

~~(c) create a nongeneral power in any person to appoint to one or more of the permissible appointees of the original nongeneral power; or~~

~~(d) create a nongeneral power in a permissible appointee to appoint to one or more persons if the permissible appointees of the new nongeneral power include the permissible appointees of the original nongeneral power."~~

Section 103. Section 72-7-401, MCA, is amended to read:

"72-7-401. Disclaimer. As provided by ~~72-2-811~~ [sections 55 and 56 48 AND 49]:

(1) a powerholder may disclaim all or part of a power of appointment; and

(2) a permissible appointee, appointee, or taker in default of appointment may disclaim all or part of an interest in appointive property."

Section 104. Section 72-15-301, MCA, is amended to read:

"72-15-301. Compensation of public administrator. (1) The public administrator must receive and shall collect for the administrator's own use as full compensation for services under this chapter, ~~including attorney fees, the amounts~~ the amount provided for in 72-3-631 and 72-3-633.

(2) When the public administrator is appointed conservator of the estate of a protected person pursuant to chapter 5, part 4, of this title, the court may order that a reasonable sum be deducted from payments due to the protected person or from the protected person's estate to be paid to the public administrator as full

1 compensation for the public administrator's services, excluding court costs and attorney fees. The total sum
2 deducted as compensation for the public administrator may not be less than \$100."

3
4 **NEW SECTION. Section 105. Directions to code commissioner.** (1) The code commissioner is
5 instructed to renumber 72-2-223, 72-2-225, 72-2-228, and 72-2-230 in accordance with the Uniform Probate
6 Code.

7 (2) The code commissioner is instructed to change all internal references within and to the renumbered
8 sections in the Montana Code Annotated, including within sections enacted or amended by the 2019 legislature,
9 to reflect new section numbers assigned pursuant to this section.

10
11 **NEW SECTION. Section 106. Codification instruction.** (1) [Section 1] is intended to be codified as
12 an integral part of Title 72, chapter 1, and the provisions of Title 72, chapter 1, apply to [section 1].

13 (2) [Section 2] is intended to be codified as an integral part of Title 72, and the provisions of Title 72 apply
14 to [section 2].

15 (3) [Sections 12 through ~~29~~ 22] are intended to be codified as an integral part of Title 72, chapter 2, part
16 2, and the provisions of Title 72, chapter 2, part 2, apply to [sections 12 through ~~29~~ 22].

17 (4) [Section ~~40~~ 33] is intended to be codified as an integral part of Title 72, chapter 2, part 7, and the
18 provisions of Title 72, chapter 2, part 7, apply to [section ~~40~~ 33].

19 (5) [Sections ~~45 through 63~~ 38 THROUGH 56] are intended to be codified as an integral part of Title 72,
20 chapter 2, part 8, and the provisions of Title 72, chapter 2, part 8, apply to [sections ~~45 through 63~~ 38 THROUGH
21 56].

22 ~~(6) [Section 65] is intended to be codified as an integral part of Title 72, chapter 3, part 1, and the~~
23 ~~provisions of Title 72, chapter 3, part 1, apply to [section 65].~~

24 ~~(7)(6)~~ [Section ~~72~~ 64] is intended to be codified as an integral part of Title 72, chapter 3, part 3, and the
25 provisions of Title 72, chapter 3, part 3, apply to [section ~~72~~ 64].

26 ~~(8)(7)~~ [Section ~~84~~ 73] is intended to be codified as an integral part of Title 72, chapter 3, part 6, and the
27 provisions of Title 72, chapter 3, part 6, apply to [section ~~84~~ 73].

28 ~~(9)(8)~~ [Section ~~94~~ 83] is intended to be codified as an integral part of Title 72, chapter 6, part 1, and the
29 provisions of Title 72, chapter 6, part 1, apply to [section ~~94~~ 83].

30 ~~(10)(9)~~ [Sections ~~93 through 110~~ 85 THROUGH 102] are intended to be codified as an integral part of Title

1 72, chapter 6, and the provisions of Title 72, chapter 6, apply to [sections ~~93 through 110~~ 85 THROUGH 102].

2

3 NEW SECTION. Section 107. Repealer. The following sections of the Montana Code Annotated are

4 repealed:

5 ~~72-2-124. Parent and child relationship.~~

6 72-2-215. Reporting duty of personal representative in estate involving alien heir.

7 72-2-221. Elective share.

8 72-2-222. Augmented estate.

9 72-2-224. Waiver of right to elect and of other rights.

10 72-2-226. Effect of election on statutory benefits.

11 72-2-227. Sources from which elective share payable.

12 72-2-715. Class gifts construed to accord with intestate succession.

13 72-2-811. Disclaimer of property interests.

14 ~~72-2-1017. Honorary trusts -- trusts for pets.~~

15 72-3-113. Rules for determining location of property.

16 72-3-309. Testimony of attesting witnesses in contested cases -- presumptions for self-proved will.

17 72-3-633. Compensation of attorney.

18 72-6-121. Beneficiary deed -- form -- definitions.

19 72-6-123. Liability for creditor claims and statutory allowances.

20 - END -

SENATE BILL NO. 225

INTRODUCED BY S. FITZPATRICK, K. DUDIK, J. KRAUTTER, M. MCNALLY, B. MERCER

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE PROVISIONS OF THE UNIFORM PROBATE CODE; REVISING ESTATES, TRUSTS, AND FIDUCIARY RELATIONSHIP LAWS; ADOPTING THE UNIFORM DISCLAIMER OF PROPERTY INTERESTS ACT; ADOPTING THE UNIFORM REAL PROPERTY TRANSFER ON DEATH ACT; AMENDING SECTIONS 72-1-103, 72-1-201, 72-1-208, 72-1-302, 72-1-303, 72-2-112, 72-2-114, 72-2-116, 72-2-118, 72-2-223, 72-2-225, 72-2-228, 72-2-230, 72-2-412, 72-2-413, 72-2-415, 72-2-613, 72-2-616, 72-2-712, 72-2-716, 72-2-717, 72-2-813, 72-2-814, 72-3-102, 72-3-112, 72-3-122, 72-3-131, 72-3-201, 72-3-202, 72-3-203, 72-3-401, 72-3-404, 72-3-502, 72-3-504, 72-3-514, 72-3-607, 72-3-611, 72-3-613, 72-3-618, 72-3-631, 72-3-803, 72-3-815, 72-3-917, 72-3-1012, 72-3-1013, 72-4-203, 72-6-111, ~~72-6-213,~~ ~~72-7-305,~~ 72-7-401, AND 72-15-301, MCA; AND REPEALING SECTIONS ~~72-2-124,~~ 72-2-215, 72-2-221, 72-2-222, 72-2-224, 72-2-226, 72-2-227, ~~72-2-715,~~ 72-2-811, ~~72-2-1017,~~ 72-3-113, 72-3-309, 72-3-633, 72-6-121, AND 72-6-123, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Purpose -- rule of construction. (1) This code shall be liberally construed and applied to promote its underlying purposes and policies.

(2) The underlying purposes and policies of this code are to:

(a) simplify and clarify the law concerning the affairs of decedents, missing persons, protected persons, minors, and incapacitated persons;

(b) discover and make effective the intent of a decedent in distribution of the decedent's property;

(c) promote a speedy and efficient system for liquidating the estate of the decedent and making distribution to the decedent's successors;

(d) facilitate use and enforcement of certain trusts; and

(e) make uniform the law among the various jurisdictions.

NEW SECTION. Section 2. Severability. If any provision of this code or the application of this code to any person or circumstances is held invalid, the invalidity may not affect other provisions or applications of the

code which can be given effect without the invalid provision or application, and to this end the provisions of this code are declared to be severable.

Section 3. Section 72-1-103, MCA, is amended to read:

"72-1-103. General definitions. Subject to additional definitions contained in the subsequent chapters that are applicable to specific chapters, parts, or sections and unless the context otherwise requires, in chapters 1 through 6, the following definitions apply:

(1) "Agent" includes an attorney-in-fact under a durable or nondurable power of attorney, an individual authorized to make decisions concerning another's health care, and an individual authorized to make decisions for another under a natural death act.

(2) "Application" means a written request to the clerk for an order of informal probate or appointment under chapter 3, part 2.

(3) "Beneficiary", as it relates to:

(a) a trust beneficiary, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer;

(b) a charitable trust, includes any person entitled to enforce the trust;

(c) a beneficiary of a beneficiary designation, refers to a beneficiary of:

(i) an account with POD designation or a security registered in beneficiary form (TOD); or

(ii) any other nonprobate transfer at death; and

(d) a beneficiary designated in a governing instrument, includes a grantee of a deed, a devisee, a trust beneficiary, a beneficiary of a beneficiary designation, a donee, and a person in whose favor a power of attorney or a power held in any individual, fiduciary, or representative capacity is exercised.

(4) "Beneficiary designation" refers to a governing instrument naming a beneficiary of:

(a) an account with POD designation or a security registered in beneficiary form (TOD); or

(b) any other nonprobate transfer at death.

(5) "Child" includes an individual entitled to take as a child under chapters 1 through 5 by intestate succession from the parent whose relationship is involved and excludes a person who is only a stepchild, a foster child, a grandchild, or any more remote descendant.

(6) (a) "Claims", in respect to estates of decedents and protected persons, includes liabilities of the decedent or protected person, whether arising in contract, in tort, or otherwise, and liabilities of the estate that

1 arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses
2 and expenses of administration.

3 (b) The term does not include estate taxes or demands or disputes regarding title of a decedent or
4 protected person to specific assets alleged to be included in the estate.

5 (7) "Clerk" or "clerk of court" means the clerk of the district court.

6 (8) "Conservator" means a person who is appointed by a court to manage the estate of a protected
7 person.

8 (9) "Court" means the district court in this state having jurisdiction in matters relating to the affairs of
9 decedents.

10 (10) "Descendant" of an individual means all of the individual's descendants of all generations, with the
11 relationship of parent and child at each generation being determined by the definition of child and parent
12 contained in this ~~section~~ code.

13 (11) "Devise" when used as a noun means a testamentary disposition of real or personal property and
14 when used as a verb means to dispose of real or personal property by will.

15 (12) "Devisee" means a person designated in a will to receive a devise. For purposes of chapter 3, in the
16 case of a devise to an existing trust or trustee or to a trustee or trust described by will, the trust or trustee is the
17 devisee and the beneficiaries are not devisees.

18 (13) "Disability" means cause for a protective order as described by 72-5-409.

19 (14) "Distributee" means any person who has received property of a decedent from the decedent's
20 personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the
21 extent of distributed assets or increment to distributed assets remaining in the trustee's hands. A beneficiary of
22 a testamentary trust to whom the trustee has distributed property received from a personal representative is a
23 distributee of the personal representative. For purposes of this provision, "testamentary trustee" includes a trustee
24 to whom assets are transferred by will, to the extent of the devised assets.

25 (15) "Estate" includes the property of the decedent, trust, or other person whose affairs are subject to
26 chapters 1 through 5 as originally constituted and as it exists from time to time during administration.

27 (16) "Exempt property" means that property of a decedent's estate that is described in 72-2-413.

28 (17) "Fiduciary" includes a personal representative, guardian, conservator, and trustee.

29 (18) "Foreign personal representative" means a personal representative appointed by another jurisdiction.

30 (19) "Formal proceedings" means proceedings conducted before a judge with notice to interested

1 persons.

2 (20) "Governing instrument" means a deed; will; trust; insurance or annuity policy; account with POD
3 designation; security registered in beneficiary form (TOD); pension, profit-sharing, retirement, or similar benefit
4 plan; instrument creating or exercising a power of appointment or a power of attorney; or dispositive, appointive,
5 or nominative instrument of any similar type.

6 (21) "Guardian" means a person who has qualified as a guardian of a minor or incapacitated person
7 pursuant to testamentary or court appointment but excludes one who is merely a guardian ad litem.

8 (22) "Heirs", except as controlled by 72-2-721, means persons, including the surviving spouse and the
9 state, who are entitled under the statutes of intestate succession to the property of a decedent.

10 (23) "Incapacitated person" has the meaning provided in 72-5-101.

11 (24) "Informal proceedings" means proceedings conducted without notice to interested persons by the
12 clerk of court for probate of a will or appointment of a personal representative.

13 (25) "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries, and any
14 others having a property right in or claim against a trust estate or the estate of a decedent, ward, or protected
15 person. The term also includes persons having priority for appointment as personal representative and other
16 fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time
17 to time and must be determined according to the particular purposes of and matter involved in any proceeding.

18 (26) "Issue" of a person means a descendant.

19 (27) "Joint tenants with the right of survivorship" includes co-owners of property held under circumstances
20 that entitle one or more to the whole of the property on the death of the other or others but excludes forms of
21 co-ownership registration in which the underlying ownership of each party is in proportion to that party's
22 contribution.

23 (28) "Lease" includes an oil, gas, coal, or other mineral lease.

24 (29) "Letters" includes letters testamentary, letters of guardianship, letters of administration, and letters
25 of conservatorship.

26 (30) "Minor" means a person who is under 18 years of age.

27 (31) "Mortgage" means any conveyance, agreement, or arrangement in which property is used as
28 security.

29 (32) "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of
30 death.

(33) "Organization" means a corporation, business trust, estate, trust, partnership, joint venture, association, government or governmental subdivision or agency, or any other legal or commercial entity.

(34) "Parent" includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under chapters 1 through 5 by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent, or grandparent.

(35) "Payor" means a trustee, insurer, business entity, employer, government, governmental agency or subdivision, or any other person authorized or obligated by law or a governing instrument to make payments.

(36) "Person" means an individual, a corporation, an organization, or other legal entity.

(37) "Personal representative" includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status. "General personal representative" excludes special administrator.

(38) "Petition" means a written request to the court for an order after notice.

(39) "Proceeding" includes action at law and suit in equity.

(40) "Property" includes both real and personal property or any interest in that property and means anything that may be the subject of ownership.

(41) "Protected person" has the meaning provided in 72-5-101.

(42) "Protective proceeding" has the meaning provided in 72-5-101.

(43) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

~~(43)~~(44) "Security" includes any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; collateral trust certificate; transferable share; voting trust certificate; in general, any interest or instrument commonly known as a security; any certificate of interest or participation; or any temporary or interim certificate, receipt, or certificate of deposit for or any warrant or right to subscribe to or purchase any of the foregoing.

~~(44)~~(45) "Settlement", in reference to a decedent's estate, includes the full process of administration, distribution, and closing.

(46) "Sign" means, with present intent to authenticate or adopt a record other than a will:

(a) to execute or adopt a tangible symbol; or

(b) to attach to or logically associate with the record an electronic symbol, sound, or process.

~~(45)~~(47) "Special administrator" means a personal representative as described by chapter 3, part 7.

~~(46)~~(48) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

~~(47)~~(49) "Successor personal representative" means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.

~~(48)~~(50) "Successors" means persons, other than creditors, who are entitled to property of a decedent under the decedent's will or chapters 1 through 5.

~~(49)~~(51) "Supervised administration" refers to the proceedings described in chapter 3, part 4.

~~(50)~~(52) "Survive" means that an individual has neither predeceased an event, including the death of another individual, nor is considered to have predeceased an event under 72-2-114 or 72-2-712. The term includes its derivatives, such as "survives", "survived", "survivor", and "surviving".

~~(51)~~(53) "Testacy proceeding" means a proceeding to establish a will or determine intestacy.

~~(52)~~(54) "Testator" includes an individual of either sex.

~~(53)~~(55) "Trust" includes an express trust, private or charitable, with additions to the trust, wherever and however created. The term also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. The term excludes other constructive trusts and excludes resulting trusts; conservatorships; personal representatives; trust accounts as defined in 72-6-111 and Title 72, chapter 6, parts 2 and 3; custodial arrangements pursuant to chapter 26; business trusts providing for certificates to be issued to beneficiaries; common trust funds; voting trusts; security arrangements; liquidation trusts; trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind; and any arrangement under which a person is nominee or escrowee for another.

~~(54)~~(56) "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by court.

~~(55)~~(57) "Ward" means an individual described in 72-5-101.

~~(56)~~(58) "Will" includes codicil and any testamentary instrument that merely appoints an executor, revokes or revises another will, nominates a guardian, or expressly excludes or limits the right of an individual or class to succeed to property of the decedent passing by intestate succession."

Section 4. Section 72-1-201, MCA, is amended to read:

"72-1-201. Territorial application. Except as otherwise provided in this code, this code applies to:

- 1 (1) the affairs and estates of decedents, missing persons, and persons to be protected in this state;
2 (2) the property of nonresidents located in this state or property coming into the control of a fiduciary who
3 is subject to the laws of this state; ~~and~~
4 (3) incapacitated persons and minors in this state; and
5 (4) survivorship and related accounts in this state."
6

7 **Section 5.** Section 72-1-208, MCA, is amended to read:

8 **"72-1-208. Jury trial.** (1) If duly demanded, a party is entitled to trial by jury in a formal testacy
9 proceeding, ~~a formal proceeding for determination of heirship, and any other proceeding as may be provided for~~
10 ~~by law~~ and any proceeding in which any controverted question of fact arises as to which any party has a
11 constitutional right to trial by jury.

12 (2) If there is no right to trial by jury under subsection (1) or the right is waived, the court in its discretion
13 may call a jury to decide any issue of fact, in which case the verdict is advisory only."
14

15 **Section 6.** Section 72-1-302, MCA, is amended to read:

16 **"72-1-302. Waiver of notice.** A person, including a guardian ad litem, conservator, or other fiduciary,
17 may waive notice by a writing signed by the person or the person's attorney and filed in the proceeding. A person
18 for whom a guardianship or other protective order is sought, a ward, or a protected person may not waive notice."
19

20 **Section 7.** Section 72-1-303, MCA, is amended to read:

21 **"72-1-303. Pleadings -- when orders or notice binding one binds another -- representation.** In
22 formal proceedings involving trusts or estates of decedents, minors, protected persons, or incapacitated persons
23 and in judicially supervised settlements, the following apply:

24 (1) Interests to be affected must be described in pleadings that give reasonable information to owners
25 by name or class, by reference to the instrument creating the interests, or in other appropriate manner.

26 (2) Persons are bound by orders binding others in the following cases:

27 (a) Orders binding the sole holder or all coholders of a power of revocation or a presently exercisable
28 general power of appointment, including one in the form of a power of amendment, bind other persons to the
29 extent their interests, as objects, takers in default, or otherwise, are subject to the power.

30 (b) (i) To the extent there is no conflict of interest between them or among persons represented, orders

1 binding a:

2 (A) conservator bind the person whose estate the conservator controls;

3 (B) guardian bind the ward if a conservator of the ward's estate has not been appointed;

4 (C) trustee bind beneficiaries of the trust in proceedings to probate a will establishing or adding to a trust,
5 to review the acts or accounts of a prior fiduciary, and in proceedings involving creditors or other third parties;

6 and

7 (D) personal representative bind persons interested in the undistributed assets of a decedent's estate
8 in actions or proceedings by or against the estate; and

9 (E) a sole holder or all co-holders of a general testamentary power of appointment binds other persons
10 to the extent their interests as objects, takers in default, or otherwise are subject to the power.

11 (ii) If there is no conflict of interest and a conservator or guardian has not been appointed, a parent may
12 represent the parent's minor child.

13 (c) An unborn or unascertained person who is not otherwise represented is bound by an order to the
14 extent the person's interest is adequately represented by another party having a substantially identical interest
15 in the proceeding.

16 (3) Notice is required as follows:

17 (a) Notice as prescribed by 72-1-301 must be given to every interested person or to one who can bind
18 an interested person as described in subsection (2)(a) or (2)(b). Notice may be given both to a person and to
19 another who may bind the person.

20 (b) Notice is given to unborn or unascertained persons, who are not represented under subsection (2)(a)
21 or (2)(b), by giving notice to all known persons whose interests in the proceedings are substantially identical to
22 those of the unborn or unascertained persons.

23 (4) At any point in a proceeding, a court may appoint a guardian ad litem to represent the interest of a
24 minor, an incapacitated, unborn, or unascertained person, or a person whose identity or address is unknown if
25 the court determines that representation of the interest otherwise would be inadequate. If not precluded by conflict
26 of interests, a guardian ad litem may be appointed to represent several persons or interests. The court shall set
27 out its reasons for appointing a guardian ad litem as a part of the record of the proceeding."

28
29 **Section 8.** Section 72-2-112, MCA, is amended to read:

30 **"72-2-112. Share of spouse.** The intestate share of a decedent's surviving spouse is:

(1) the entire intestate estate if:

(a) no descendant or parent of the decedent survives the decedent; or

(b) all of the decedent's surviving descendants are also descendants of the surviving spouse and there is no other descendant of the surviving spouse who survives the decedent;

(2) the first ~~\$200,000~~ \$300,000, plus three-fourths of any balance of the intestate estate, if no descendant of the decedent survives the decedent but a parent of the decedent survives the decedent;

(3) the first ~~\$150,000~~ \$225,000, plus one-half of any balance of the intestate estate, if all of the decedent's surviving descendants are also descendants of the surviving spouse and the surviving spouse has one or more surviving descendants who are not descendants of the decedent;

(4) the first ~~\$100,000~~ \$150,000, plus one-half of any balance of the intestate estate, if one or more of the decedent's surviving descendants are not descendants of the surviving spouse."

Section 9. Section 72-2-114, MCA, is amended to read:

"72-2-114. Requirement that heir survive decedent for 120 hours. An individual who fails to survive the decedent by 120 hours is ~~considered~~ deemed to have predeceased the decedent for purposes of homestead allowance, exempt property, and intestate succession, and the decedent's heirs are determined accordingly. If it is not established by clear and convincing evidence that an individual who would otherwise be an heir survived the decedent by 120 hours, it is ~~considered~~ deemed that the individual failed to survive for the required period. This section is not to be applied if its application would result in a taking of intestate estate by the state under 72-2-115."

Section 10. Section 72-2-116, MCA, is amended to read:

"72-2-116. Representation. (1) As used in this section, the following definitions apply:

(a) "Deceased descendant", "deceased parent", or "deceased grandparent" means a descendant, parent, or grandparent who either predeceased the decedent or is ~~considered~~ deemed to have predeceased the decedent under 72-2-114.

(b) "Surviving descendant" means a descendant who neither predeceased the decedent nor is ~~considered~~ deemed to have predeceased the decedent under 72-2-114.

(2) (a) If, under 72-2-113(1)(a), a decedent's intestate estate or a part of the intestate estate passes by representation to the decedent's descendants, the estate or part of the estate is divided into as many equal

1 shares as there are:

2 (i) surviving descendants in the generation nearest to the decedent that contains one or more surviving
3 descendants; and

4 (ii) deceased descendants in the same generation who left surviving descendants, if any.

5 (b) Each surviving descendant in the nearest generation is allocated one share. The share of each
6 deceased descendant in the same generation as the surviving descendant is divided in the same manner, with
7 the subdivision repeating at each succeeding generation until the property is fully allocated among surviving
8 descendants.

9 (3) (a) If, under 72-2-113(1)(c) or (1)(d), a decedent's intestate estate or a part of the intestate estate
10 passes by representation to the descendants of the decedent's deceased parents or either of them or to the
11 descendants of the decedent's deceased paternal or maternal grandparents or either of them, the estate or part
12 of the estate is divided into as many equal shares as there are:

13 (i) surviving descendants in the generation nearest the deceased parents or either of them or nearest
14 the deceased grandparents or either of them that contains one or more surviving descendants; and

15 (ii) deceased descendants in the same generation who left surviving descendants, if any.

16 (b) Each surviving descendant in the nearest generation is allocated one share. The share of each
17 deceased descendant in the same generation as the surviving descendant is divided in the same manner, with
18 the subdivision repeating at each succeeding generation until the property is fully allocated among surviving
19 descendants."
20

21 **Section 11.** Section 72-2-118, MCA, is amended to read:

22 **"72-2-118. Afterborn heirs.** An individual in gestation at a particular time is treated as living at that time
23 if the individual lives 120 hours or more after birth. If it is not established by clear and convincing evidence that
24 an individual in gestation at the decedent's death lived 120 hours after birth, it is deemed that the individual failed
25 to survive for the required period."
26

27 **NEW SECTION. Section 12. Parent barred from inheriting in certain circumstances.** (1) A parent
28 is barred from inheriting from or through a child of the parent if:

29 (a) the parent's parental rights were terminated and the parent-child relationship was not judicially
30 reestablished; or

(b) the child died before reaching 18 years of age and there is clear and convincing evidence that immediately before the child's death the parental rights of the parent could have been terminated under law of this state other than this code on the basis of nonsupport, abandonment, abuse, neglect, or other actions or inactions of the parent toward the child.

(2) For the purpose of intestate succession from or through the deceased child, a parent who is barred from inheriting under this section is treated as if the parent predeceased the child.

~~NEW SECTION. Section 13. Definitions. In [sections 13 through 19]:~~

~~(1) "Adoptee" means an individual who is adopted.~~

~~(2) "Assisted reproduction" means a method of causing pregnancy other than sexual intercourse.~~

~~(3) "Divorce" includes an annulment, dissolution, and declaration of invalidity of a marriage.~~

~~(4) "Functioned as a parent of the child" means behaving toward a child in a manner consistent with being the child's parent and performing functions that are customarily performed by a parent, including fulfilling parental responsibilities toward the child, recognizing or holding out the child as the individual's child, materially participating in the child's upbringing, and residing with the child in the same household as a regular member of that household.~~

~~(5) "Genetic father" means the man whose sperm fertilized the egg of a child's genetic mother. If the father-child relationship is established under the presumption of paternity under 40-6-105, the term means only the man for whom that relationship is established.~~

~~(6) "Genetic mother" means the woman whose egg was fertilized by the sperm of a child's genetic father.~~

~~(7) "Genetic parent" means a child's genetic father or genetic mother.~~

~~(8) "Incapacity" means the inability of an individual to function as a parent of a child because of the individual's physical or mental condition.~~

~~(9) "Relative" means a grandparent or a descendant of a grandparent.~~

~~NEW SECTION. Section 14. Effect of parent-child relationship. Except as otherwise provided in [section 17(2) through (5)], if a parent-child relationship exists or is established under [sections 13 through 19], the parent is a parent of the child and the child is a child of the parent for the purpose of intestate succession.~~

~~NEW SECTION. Section 15. No distinction based on marital status. Except as otherwise provided~~

1 in [sections 12, 17, 18, or 19], a parent-child relationship exists between a child and the child's genetic parents;
2 regardless of the parents' marital status.

3
4 ~~NEW SECTION. Section 16. Adoptee and adoptee's adoptive parent or parents.~~ (1) A parent-child
5 relationship exists between an adoptee and the adoptee's adoptive parent or parents:

6 ~~(2) For purposes of subsection (1):~~

7 ~~(a) an individual who is in the process of being adopted by a married couple when one of the spouses~~
8 ~~dies is treated as adopted by the deceased spouse if the adoption is subsequently granted to the decedent's~~
9 ~~surviving spouse; and~~

10 ~~(b) a child of a genetic parent who is in the process of being adopted by a genetic parent's spouse when~~
11 ~~the spouse dies is treated as adopted by the deceased spouse if the genetic parent survives the deceased~~
12 ~~spouse by 120 hours.~~

13 ~~(3) If, after a parent-child relationship is established between a child of assisted reproduction and a parent~~
14 ~~under [section 18] or between a gestational child and a parent under [section 19], the child is in the process of~~
15 ~~being adopted by the parent's spouse when that spouse dies, the child is treated as adopted by the deceased~~
16 ~~spouse for the purpose of subsection (2)(b).~~

17
18 ~~NEW SECTION. Section 17. Adoptee and adoptee's genetic parents.~~ (1) Except as otherwise
19 provided in subsections (2) through (5), a parent-child relationship does not exist between an adoptee and the
20 adoptee's genetic parents:

21 ~~(2) A parent-child relationship exists between an individual who is adopted by the spouse of either genetic~~
22 ~~parent and:~~

23 ~~(a) the genetic parent whose spouse adopted the individual; and~~

24 ~~(b) the other genetic parent, but only for the purpose of the right of the adoptee or a descendant of the~~
25 ~~adoptee to inherit from or through the other genetic parent.~~

26 ~~(3) A parent-child relationship exists between both genetic parents and an individual who is adopted by~~
27 ~~a relative of a genetic parent, or by the spouse or surviving spouse of a relative of a genetic parent, but only for~~
28 ~~the purpose of the right of the adoptee or a descendant of the adoptee to inherit from or through either genetic~~
29 ~~parent.~~

30 ~~(4) A parent-child relationship exists between both genetic parents and an individual who is adopted after~~

1 the death of both genetic parents, but only for the purpose of the right of the adoptee or a descendant of the
2 adoptee to inherit through either genetic parent.

3 ~~——— (5) If, after a parent-child relationship is established between a child of assisted reproduction and a parent
4 or parents under [section 18] or between a gestational child and a parent or parents under [section 19], the child
5 is adopted by another or others, the child's parent or parents under [sections 18 or 19] are treated as the child's
6 genetic parent or parents for the purpose of this section.~~

7
8 ~~——— NEW SECTION. **Section 18. Child conceived by assisted reproduction other than child born to**
9 **gestational carrier.** (1) In this section:~~

10 ~~——— (a) "Birth mother" means a woman, other than a gestational carrier under [section 19], who gives birth
11 to a child of assisted reproduction. The term is not limited to a woman who is the child's genetic mother.~~

12 ~~——— (b) "Child of assisted reproduction" means a child conceived by means of assisted reproduction by a
13 woman other than a gestational carrier under [section 19].~~

14 ~~——— (c) "Third-party donor" means an individual who produces eggs or sperm used for assisted reproduction;
15 whether or not for consideration. The term does not include:~~

16 ~~——— (i) a husband who provides sperm, or a wife who provides eggs, that are used for assisted reproduction
17 by the wife;~~

18 ~~——— (ii) the birth mother of a child of assisted reproduction; or~~

19 ~~——— (iii) an individual who has been determined under subsection (5) or (6) to have a parent-child relationship
20 with a child of assisted reproduction.~~

21 ~~——— (2) A parent-child relationship does not exist between a child of assisted reproduction and a third-party
22 donor.~~

23 ~~——— (3) A parent-child relationship exists between a child of assisted reproduction and the child's birth mother.~~

24 ~~——— (4) Except as otherwise provided in subsections (9) and (10), a parent-child relationship exists between
25 a child of assisted reproduction and the husband of the child's birth mother if the husband provided the sperm
26 that the birth mother used during his lifetime for assisted reproduction.~~

27 ~~——— (5) A birth certificate identifying an individual other than the birth mother as the other parent of a child of
28 assisted reproduction presumptively establishes a parent-child relationship between the child and that individual.~~

29 ~~——— (6) Except as otherwise provided in subsections (7), (9), and (10), and unless a parent-child relationship
30 is established under subsection (4) or (5), a parent-child relationship exists between a child of assisted~~

~~reproduction and an individual other than the birth mother who consented to assisted reproduction by the birth mother with intent to be treated as the other parent of the child. Consent to assisted reproduction by the birth mother with intent to be treated as the other parent of the child is established if the individual:~~

~~——— (a) before or after the child's birth, signed a record that, considering all the facts and circumstances, evidences the individual's consent; or~~

~~——— (b) in the absence of a signed record under subsection (6)(a):~~

~~——— (i) functioned as a parent of the child no later than 2 years after the child's birth;~~

~~——— (ii) intended to function as a parent of the child no later than 2 years after the child's birth but was prevented from carrying out that intent by death, incapacity, or other circumstances; or~~

~~——— (iii) intended to be treated as a parent of a posthumously conceived child, if that intent is established by clear and convincing evidence.~~

~~——— (7) For the purpose of subsection (6)(a), neither an individual who signed a record more than 2 years after the birth of the child, nor a relative of that individual who is not also a relative of the birth mother, inherits from or through the child unless the individual functioned as a parent of the child before the child reached 18 years of age.~~

~~——— (8) For the purpose of subsection (6)(b), the following rules apply:~~

~~——— (a) If the birth mother is married and no divorce proceeding is pending, in the absence of clear and convincing evidence to the contrary, her spouse satisfies subsection (6)(b)(i) or (ii).~~

~~——— (b) If the birth mother is a surviving spouse and at her deceased spouse's death no divorce proceeding was pending, in the absence of clear and convincing evidence to the contrary, her deceased spouse satisfies subsection (6)(b)(ii) or (iii).~~

~~——— (9) If a married couple is divorced before placement of eggs, sperm, or embryos, a child resulting from the assisted reproduction is not a child of the birth mother's former spouse, unless the former spouse consented in a record that if assisted reproduction were to occur after divorce, the child would be treated as the former spouse's child.~~

~~——— (10) If, in a record, an individual withdraws consent to assisted reproduction before placement of eggs, sperm, or embryos, a child resulting from the assisted reproduction is not a child of that individual, unless the individual subsequently satisfies subsection (6).~~

~~——— (11) If, under this section, an individual is a parent of a child of assisted reproduction who is conceived after the individual's death, the child is treated as in gestation at the individual's death for purposes of 72-2-118~~

1 if the child is:

2 ~~—— (a) in utero not later than 36 months after the individual's death; or~~

3 ~~—— (b) born not later than 45 months after the individual's death.~~

4
5 ~~—— **NEW SECTION. Section 19. Child born to gestational carrier.** (1) In this section:~~

6 ~~—— (a) "Gestational agreement" means an enforceable or unenforceable agreement for assisted reproduction~~
7 ~~in which a woman agrees to carry a child to birth for an intended parent, intended parents, or an individual~~
8 ~~described in subsection (5).~~

9 ~~—— (b) "Gestational carrier" means a woman who is not an intended parent who gives birth to a child under~~
10 ~~a gestational agreement. The term is not limited to a woman who is the child's genetic mother.~~

11 ~~—— (c) "Gestational child" means a child born to a gestational carrier under a gestational agreement.~~

12 ~~—— (d) "Intended parent" means an individual who entered into a gestational agreement providing that the~~
13 ~~individual will be the parent of a child born to a gestational carrier by means of assisted reproduction. The term~~
14 ~~is not limited to an individual who has a genetic relationship with the child.~~

15 ~~—— (2) A parent-child relationship is conclusively established by a court order designating the parent or~~
16 ~~parents of a gestational child.~~

17 ~~—— (3) A parent-child relationship between a gestational child and the child's gestational carrier does not exist~~
18 ~~unless the gestational carrier is:~~

19 ~~—— (a) designated as a parent of the child in a court order described in subsection (2); or~~

20 ~~—— (b) the child's genetic mother and a parent-child relationship does not exist under this section with an~~
21 ~~individual other than the gestational carrier.~~

22 ~~—— (4) In the absence of a court order under subsection (2), a parent-child relationship exists between a~~
23 ~~gestational child and an intended parent who:~~

24 ~~—— (a) functioned as a parent of the child no later than 2 years after the child's birth; or~~

25 ~~—— (b) died while the gestational carrier was pregnant if:~~

26 ~~—— (i) there were two intended parents and the other intended parent functioned as a parent of the child no~~
27 ~~later than 2 years after the child's birth;~~

28 ~~—— (ii) there were two intended parents, the other intended parent also died while the gestational carrier was~~
29 ~~pregnant, and a relative of either deceased intended parent or the spouse or surviving spouse of a relative of~~
30 ~~either deceased intended parent functioned as a parent of the child no later than 2 years after the child's birth;~~

1 or

2 ~~—— (iii) there was no other intended parent and a relative of or the spouse or surviving spouse of a relative~~
3 ~~of the deceased intended parent functioned as a parent of the child no later than 2 years after the child's birth.~~

4 ~~—— (5) In the absence of a court order under subsection (2), a parent-child relationship exists between a~~
5 ~~gestational child and an individual whose sperm or eggs were used after the individual's death or incapacity to~~
6 ~~conceive a child under a gestational agreement entered into after the individual's death or incapacity if the~~
7 ~~individual intended to be treated as the parent of the child. The individual's intent may be shown by:~~

8 ~~—— (a) a record signed by the individual which considering all the facts and circumstances evidences the~~
9 ~~individual's intent; or~~

10 ~~—— (b) other facts and circumstances establishing the individual's intent by clear and convincing evidence.~~

11 ~~—— (6) Except as otherwise provided in subsection (7), and unless there is clear and convincing evidence~~
12 ~~of a contrary intent, an individual is deemed to have intended to be treated as the parent of a gestational child~~
13 ~~for purposes of subsection (5)(b) if:~~

14 ~~—— (a) the individual, before death or incapacity, deposited the sperm or eggs that were used to conceive~~
15 ~~the child;~~

16 ~~—— (b) when the individual deposited the sperm or eggs, the individual was married and no divorce~~
17 ~~proceeding was pending; and~~

18 ~~—— (c) the individual's spouse or surviving spouse functioned as a parent of the child no later than 2 years~~
19 ~~after the child's birth.~~

20 ~~—— (7) The presumption under subsection (6) does not apply if there is:~~

21 ~~—— (a) a court order under subsection (2); or~~

22 ~~—— (b) a signed record that satisfies subsection (5)(a).~~

23 ~~—— (8) If, under this section, an individual is a parent of a gestational child who is conceived after the~~
24 ~~individual's death, the child is treated as in gestation at the individual's death for purposes of 72-2-118 if the child~~
25 ~~is:~~

26 ~~—— (a) in utero not later than 36 months after the individual's death; or~~

27 ~~—— (b) born not later than 45 months after the individual's death.~~

28 ~~—— (9) This section does not affect law of this state other than this code regarding the enforceability or validity~~
29 ~~of a gestational agreement.~~

1 **NEW SECTION. Section 13. Definitions.** In [sections ~~20 through 29~~ 13 THROUGH 22]:

2 (1) As used in sections other than [section ~~24~~ 17], "decedent's nonprobate transfers to others" means
3 the amounts that are included in the augmented estate under [section ~~24~~ 17].

4 (2) "Fractional interest in property held in joint tenancy with the right of survivorship," whether the
5 fractional interest is unilaterally severable or not, means the fraction, the numerator of which is one and the
6 denominator of which, if the decedent was a joint tenant, is one plus the number of joint tenants who survive the
7 decedent and which, if the decedent was not a joint tenant, is the number of joint tenants.

8 (3) "Marriage," as it relates to a transfer by the decedent during marriage, means any marriage of the
9 decedent to the decedent's surviving spouse.

10 (4) "Nonadverse party" means a person who does not have a substantial beneficial interest in the trust
11 or other property arrangement that would be adversely affected by the exercise or nonexercise of the power that
12 person possesses respecting the trust or other property arrangement. A person having a general power of
13 appointment over property is deemed to have a beneficial interest in the property.

14 (5) "Power" or "power of appointment" includes a power to designate the beneficiary of a beneficiary
15 designation.

16 (6) "Presently exercisable general power of appointment" means a power of appointment under which,
17 at the time in question, the decedent, whether or not the decedent then had the capacity to exercise the power,
18 held a power to create a present or future interest in the decedent, the decedent's creditors, the decedent's
19 estate, or creditors of the decedent's estate, and includes a power to revoke or invade the principal of a trust or
20 other property arrangement.

21 (7) "Property" includes values subject to a beneficiary designation.

22 (8) "Right to income" includes a right to payments under a commercial or private annuity, an annuity trust,
23 a unitrust, or a similar arrangement.

24 (9) "Transfer," as it relates to a transfer by or of the decedent, includes:

25 (a) an exercise or release of a presently exercisable general power of appointment held by the decedent;

26 (b) a lapse at death of a presently exercisable general power of appointment held by the decedent; and

27 (c) an exercise, release, or lapse of a general power of appointment that the decedent created in the
28 decedent and of a power described in [section ~~24(2)(b)~~ 17(2)(B)] that the decedent conferred on a nonadverse
29 party.

NEW SECTION. Section 14. Elective share. (1) The surviving spouse of a decedent who dies domiciled in this state has a right of election, under the limitations and conditions stated in [sections ~~20 through 29~~ 13 THROUGH 22], to take an elective-share amount equal to 50% of the value of the marital-property portion of the augmented estate.

(2) If the sum of the amounts described in [sections ~~26 and 28(1)(a)~~ 19 AND 21(1)(A)], and that part of the elective-share amount payable from the decedent's net probate estate and nonprobate transfers to others under [section ~~28(3) and (4)~~ 21(3) AND (4)] is less than \$75,000, the surviving spouse is entitled to a supplemental elective-share amount equal to \$75,000, minus the sum of the amounts described in those sections. The supplemental elective-share amount is payable from the decedent's net probate estate and from recipients of the decedent's nonprobate transfers to others in the order of priority set forth in [section ~~28(3) and (4)~~ 21(3) AND (4)].

(3) If the right of election is exercised by or on behalf of the surviving spouse, the surviving spouse's homestead allowance, exempt property, and family allowance, if any, are not charged against but are in addition to the elective-share and supplemental elective-share amounts.

(4) The right, if any, of the surviving spouse of a decedent who dies domiciled outside this state to take an elective share in property in this state is governed by the law of the decedent's domicile at death.

NEW SECTION. Section 15. Composition of the augmented estate. (1) Subject to [section ~~27~~ 20], the value of the augmented estate, to the extent provided in [sections ~~23, 24, 25, and 26~~ 16, 17, 18, AND 19], consists of the sum of the values of all property, whether real or personal; movable or immovable, tangible or intangible, wherever situated, that constitute:

- (a) the decedent's net probate estate;
- (b) the decedent's nonprobate transfers to others;
- (c) the decedent's nonprobate transfers to the surviving spouse; and
- (d) the surviving spouse's property and nonprobate transfers to others.

(2) The value of the marital-property portion of the augmented estate consists of the sum of the values of the four components of the augmented estate as determined under subsection (1) multiplied by the following percentage:

If the decedent and the spouse	The percentage is:
were married to each other:	
Less than 1 year	3%

1	1 year but less than 2 years	6%
2	2 years but less than 3 years	12%
3	3 years but less than 4 years	18%
4	4 years but less than 5 years	24%
5	5 years but less than 6 years	30%
6	6 years but less than 7 years	36%
7	7 years but less than 8 years	42%
8	8 years but less than 9 years	48%
9	9 years but less than 10 years	54%
10	10 years but less than 11 years	60%
11	11 years but less than 12 years	68%
12	12 years but less than 13 years	76%
13	13 years but less than 14 years	84%
14	14 years but less than 15 years	92%
15	15 years or more	100%

16

17 **NEW SECTION.** **Section 16. Decedent's net probate estate.** The value of the augmented estate
 18 includes the value of the decedent's probate estate, reduced by funeral and administration expenses, homestead
 19 allowance, family allowances, exempt property, and enforceable claims.

20

21 **NEW SECTION.** **Section 17. Decedents's nonprobate transfers to others.** The value of the
 22 augmented estate includes the value of the decedent's nonprobate transfers to others, not included under [section
 23 ~~23~~ 16], of any of the following types, in the amount provided respectively for each type of transfer:

24 (1) Property owned or owned in substance by the decedent immediately before death that passed outside
 25 probate at the decedent's death. Property included under this category consists of:

26 (a) Property over which the decedent alone, immediately before death, held a presently exercisable
 27 general power of appointment. The amount included is the value of the property subject to the power, to the
 28 extent the property passed at the decedent's death, by exercise, release, lapse, in default, or otherwise, to or for
 29 the benefit of any person other than the decedent's estate or surviving spouse.

30 (b) The decedent's fractional interest in property held by the decedent in joint tenancy with the right of

1 survivorship. The amount included is the value of the decedent's fractional interest, to the extent the fractional
2 interest passed by right of survivorship at the decedent's death to a surviving joint tenant other than the
3 decedent's surviving spouse.

4 (c) The decedent's ownership interest in property or accounts held in POD, TOD, or co-ownership
5 registration with the right of survivorship. The amount included is the value of the decedent's ownership interest,
6 to the extent the decedent's ownership interest passed at the decedent's death to or for the benefit of any person
7 other than the decedent's estate or surviving spouse.

8 (2) Property transferred in any of the following forms by the decedent during marriage:

9 (a) Any irrevocable transfer in which the decedent retained the right to the possession or enjoyment of,
10 or to the income from, the property if and to the extent the decedent's right terminated at or continued beyond
11 the decedent's death. The amount included is the value of the fraction of the property to which the decedent's
12 right related, to the extent the fraction of the property passed outside probate to or for the benefit of any person
13 other than the decedent's estate or surviving spouse.

14 (b) Any transfer in which the decedent created a power over income or property, exercisable by the
15 decedent alone or in conjunction with any other person, or exercisable by a nonadverse party, to or for the benefit
16 of the decedent, creditors of the decedent, the decedent's estate, or creditors of the decedent's estate. The
17 amount included with respect to a power over property is the value of the property subject to the power, and the
18 amount included with respect to a power over income is the value of the property that produces or produced the
19 income, to the extent the power in either case was exercisable at the decedent's death to or for the benefit of any
20 person other than the decedent's surviving spouse or to the extent the property passed at the decedent's death,
21 by exercise, release, lapse, in default, or otherwise, to or for the benefit of any person other than the decedent's
22 estate or surviving spouse. If the power is a power over both income and property and the preceding sentence
23 produces different amounts, the amount included is the greater amount.

24 (3) Property that passed during marriage and during the 2 year period next preceding the decedent's
25 death as a result of a transfer by the decedent if the transfer was of any of the following types:

26 (a) Any property that passed as a result of the termination of a right or interest in, or power over, property
27 that would have been included in the augmented estate under subsection (1)(a), (1)(b), or (1)(c), or under
28 subsection (2), if the right, interest, or power had not terminated until the decedent's death. The amount included
29 is the value of the property that would have been included under those subsections if the property were valued
30 at the time the right, interest, or power terminated, and is included only to the extent the property passed upon

1 termination to or for the benefit of any person other than the decedent or the decedent's estate, spouse, or
2 surviving spouse. As used in this subsection (3)(a), "termination," with respect to a right or interest in property,
3 occurs when the right or interest terminated by the terms of the governing instrument or the decedent transferred
4 or relinquished the right or interest, and, with respect to a power over property, occurs when the power terminated
5 by exercise, release, lapse, default, or otherwise, but, with respect to a power described in subsection (1)(a),
6 "termination" occurs when the power terminated by exercise or release, but not otherwise.

7 (b) Any transfer of property, to the extent not otherwise included in the augmented estate, made to or for
8 the benefit of a person other than the decedent's surviving spouse. The amount included is the value of the
9 transferred property to the extent the transfers to any one donee in either of the 2 years exceeded the amount
10 excludable from taxable gifts under 26 U.S.C. 2503(b) or its successor on the date next preceding the date of the
11 decedent's death.

12
13 **NEW SECTION. Section 18. Decedent's nonprobate transfers to surviving spouse.** Excluding
14 property passing to the surviving spouse under the federal social security system, the value of the augmented
15 estate includes the value of the decedent's nonprobate transfers to the decedent's surviving spouse, which
16 consist of all property that passed outside probate at the decedent's death from the decedent to the surviving
17 spouse by reason of the decedent's death, including:

18 (1) the decedent's fractional interest in property held as a joint tenant with the right of survivorship, to the
19 extent that the decedent's fractional interest passed to the surviving spouse as surviving joint tenant;

20 (2) the decedent's ownership interest in property or accounts held in co-ownership registration with the
21 right of survivorship, to the extent the decedent's ownership interest passed to the surviving spouse as surviving
22 co-owner; and

23 (3) all other property that would have been included in the augmented estate under [section ~~24(1) or (2)~~
24 17(1) OR (2)] had it passed to or for the benefit of a person other than the decedent's spouse, surviving spouse,
25 the decedent, or the decedent's creditors, estate, or estate creditors.

26
27 **NEW SECTION. Section 19. Surviving spouse's property and nonprobate transfers to others.** (1)
28 Except to the extent included in the augmented estate under [sections ~~23 or 25~~ 16 OR 18], the value of the
29 augmented estate includes the value of:

30 (a) property that was owned by the decedent's surviving spouse at the decedent's death, including:

(i) the surviving spouse's fractional interest in property held in joint tenancy with the right of survivorship;
(ii) the surviving spouse's ownership interest in property or accounts held in co-ownership registration with the right of survivorship; and

(iii) property that passed to the surviving spouse by reason of the decedent's death, but not including the spouse's right to homestead allowance, family allowance, exempt property, or payments under the federal social security system; and

(b) property that would have been included in the surviving spouse's nonprobate transfers to others, other than the spouse's fractional and ownership interests included under subsection (1)(a)(i) or (1)(a)(ii), had the spouse been the decedent.

(2) Property included under this section is valued at the decedent's death, taking the fact that the decedent predeceased the spouse into account, but, for purposes of subsection (1)(a)(i) and (1)(a)(ii), the values of the spouse's fractional and ownership interests are determined immediately before the decedent's death if the decedent was then a joint tenant or a co-owner of the property or accounts.

(3) The value of property included under this section is reduced by enforceable claims against the surviving spouse.

NEW SECTION. Section 20. Exclusions, valuation, and overlapping application. (1) The value of any property is excluded from the decedent's nonprobate transfers to others:

(a) to the extent the decedent received adequate and full consideration in money or money's worth for a transfer of the property;

(b) if the property was transferred with the written joinder of, or if the transfer was consented to in writing before or after the transfer by, the surviving spouse; or

(c) if the property is life insurance or accident insurance payable to persons other than the decedent's surviving spouse or the decedent's estate.

(2) The value of property:

(a) included in the augmented estate under [sections ~~24, 25, or 26~~ 17, 18, OR 19] is reduced in each category by enforceable claims against the included property; and

(b) includes the commuted value of any present or future interest and the commuted value of amounts payable under any trust, life insurance settlement option, annuity contract, public or private pension, disability compensation, death benefit or retirement plan, or any similar arrangement, exclusive of the federal social

1 security system. The commuted value of life and term interests in income, annuity, or unitrust amount must be
2 determined in accordance with U.S. treasury regulations for internal revenue purposes in effect at the time of the
3 decedent's death.

4 (3) In case of overlapping application to the same property of [~~sections 24, 25, or 26~~ 17, 18, OR 19], the
5 property is included in the augmented estate under the provision yielding the greatest value, and under only one
6 overlapping provision if they all yield the same value.

7
8 **NEW SECTION. Section 21. Sources from which elective share payable.** (1) In a proceeding for an
9 elective share, the following are applied first to satisfy the elective-share amount and to reduce or eliminate any
10 contributions due from the decedent's probate estate and recipients of the decedent's nonprobate transfers to
11 others:

12 (a) amounts included in the augmented estate under [~~section 23~~ 16] which pass or have passed to the
13 surviving spouse by testate or intestate succession and amounts included in the augmented estate under [~~section~~
14 25 18];

15 (b) amounts included in the augmented estate that would have passed to the spouse but were
16 disclaimed; and

17 (c) the marital-property portion of amounts included in the augmented estate under [~~section 26~~ 19].

18 (2) The marital-property portion under subsection ~~(1)(b)~~ (1)(c) is computed by multiplying the value of
19 the amounts included in the augmented estate under [~~section 26~~ 19] by the percentage of the augmented estate
20 set forth in the schedule in [~~section 22(2)~~ 15(2)] appropriate to the length of time the spouse and the decedent
21 were married to each other.

22 (3) If, after the application of subsection (1), the elective-share amount is not fully satisfied, or the
23 surviving spouse is entitled to a supplemental elective-share amount, amounts included in the decedent's net
24 probate estate, other than assets passing to the surviving spouse by testate or intestate succession, and in the
25 decedent's nonprobate transfers to others under [~~section 24(1) and (2)~~ 17(1) AND (2)] are applied first to satisfy
26 the unsatisfied balance of the elective-share amount or the supplemental elective-share amount. The decedent's
27 net probate estate and that portion of the decedent's nonprobate transfers to others are so applied that liability
28 for the unsatisfied balance of the elective-share amount or for the supplemental elective-
29 share amount is apportioned among the recipients of the decedent's net probate estate and of that portion of the
30 decedent's nonprobate transfers to others in proportion to the value of their interests.

(4) If, after the application of subsections (1) and (3), the elective-share or supplemental elective-share amount is not fully satisfied, the remaining portion of the decedent's nonprobate transfers to others is so applied that liability for the unsatisfied balance of the elective-share or supplemental elective-share amount is apportioned among the recipients of the remaining portion of the decedent's nonprobate transfers to others in proportion to the value of their interests therein.

(5) The unsatisfied balance of the elective-share or supplemental elective-share amount as determined under subsection (3) or (4) is treated as a general pecuniary devise for purposes of 72-3-913.

NEW SECTION. Section 22. Effect of premarital or marital agreement right to elect and of other rights. (1) In this section, "agreement" includes a subsequent agreement that affirms, modifies, or waives an earlier agreement.

(2) The right of election of a surviving spouse and the rights of the surviving spouse to homestead allowance, exempt property, and family allowance, or any of them, may be affirmed, modified, or waived wholly or partially, only by a written agreement signed by the surviving spouse, before or after the marriage. The agreement is enforceable without consideration.

(3) An agreement under subsection (2) is not enforceable if the surviving spouse proves that:

(a) the agreement was involuntary or the result of duress;

(b) the surviving spouse did not have access to independent legal representation under subsection (4);

(c) unless the surviving spouse had independent legal representation when the agreement was executed, the agreement did not include an explanation in plain language of the rights under subsection (2) being affirmed, modified, or waived; or

(d) before signing the agreement, the surviving spouse did not receive adequate financial disclosure under subsection (5).

(4) A surviving spouse had access to independent legal representation if:

(a) before signing an agreement, the surviving spouse had a reasonable time to:

(i) decide whether to retain a lawyer to provide independent legal representation; and

(ii) locate a lawyer to provide independent legal representation, obtain the lawyer's advice, and consider the advice provided; and

(b) the other spouse was represented by a lawyer and the surviving spouse had the financial ability to retain a lawyer or the other spouse agreed to pay the reasonable fees and expenses of independent legal

1 representation.

2 (5) A surviving spouse had adequate financial disclosure under this section if the surviving spouse:

3 (a) received a reasonably accurate description and good-faith estimate of the value of the property,
4 liabilities, and income of the other spouse;

5 (b) expressly waived, in a separate signed record, the right to financial disclosure beyond the disclosure
6 provided; or

7 (c) had adequate knowledge or a reasonable basis for having adequate knowledge of the information
8 described in subsection (5)(a).

9 (6) Unless an agreement under subsection (2) provides to the contrary, a waiver of "all rights," or
10 equivalent language, in the property or estate of a present or prospective spouse or a complete property
11 settlement entered into after or in anticipation of separation or divorce is a waiver of all rights of elective share,
12 homestead allowance, exempt property, and family allowance by the spouse in the property of the other spouse
13 and a renunciation of all benefits that would otherwise pass to the renouncing spouse by intestate succession
14 or by virtue of any will executed before the waiver or property settlement.

15
16 **Section 23.** Section 72-2-223, MCA, is amended to read:

17 **"72-2-223. Right of election personal to surviving spouse -- incapacitated surviving spouse. (1)**

18 The right of election may be exercised only by a surviving spouse who is living when the petition for the elective
19 share is filed in the court under 72-2-225(1). If the election is not exercised by the surviving spouse personally,
20 it may be exercised on the surviving spouse's behalf by the surviving spouse's conservator, guardian, or agent
21 under the authority of a power of attorney.

22 (2) If the election is exercised on behalf of a surviving spouse who is an incapacitated person, the court
23 shall set aside that portion of the elective-share and supplemental elective-share amounts due from the
24 decedent's probate estate and recipients of the decedent's nonprobate transfers to others under ~~72-2-227(2)~~ and
25 ~~(3) [section 28(3) and (4) 21(3) AND (4)]~~ and shall appoint a trustee to administer that property for the support of
26 the surviving spouse. For the purposes of this subsection, an election on behalf of a surviving spouse by an agent
27 under a durable power of attorney is presumed to be on behalf of a surviving spouse who is an incapacitated
28 person. The trustee shall administer the trust in accordance with the following terms and such additional terms
29 as the court determines appropriate:

30 (a) Expenditures of income and principal may be made in the manner, when, and to the extent that the

1 trustee determines suitable and proper for the surviving spouse's support, without court order but with regard to
2 other support, income, and property of the surviving spouse exclusive of benefits of medical or other forms of
3 assistance from any state or federal government or governmental agency for which the surviving spouse qualifies
4 on the basis of need.

5 (b) During the surviving spouse's incapacity, neither the surviving spouse nor anyone acting on behalf
6 of the surviving spouse has a power to terminate the trust; but if the surviving spouse regains capacity, the
7 surviving spouse then acquires the power to terminate the trust and acquire full ownership of the trust property
8 free of trust by delivering to the trustee a writing signed by the surviving spouse declaring the termination.

9 (c) Upon the surviving spouse's death, the trustee shall transfer the unexpended trust property in the
10 following order:

11 (i) under the residuary clause, if any, of the will of the predeceased spouse against whom the elective
12 share was taken, as if that predeceased spouse died immediately after the surviving spouse; or

13 (ii) to that predeceased spouse's heirs under 72-2-721."
14

15 **Section 24.** Section 72-2-225, MCA, is amended to read:

16 **"72-2-225. Proceeding for elective share -- time limit.** (1) Except as provided in subsection (2), the
17 election must be made by filing in the court and mailing or delivering to the personal representative, if any, a
18 petition for the elective share within 9 months after the date of the decedent's death or within 6 months after the
19 probate of the decedent's will, whichever limitation later expires. The surviving spouse shall give notice of the time
20 and place set for hearing to persons interested in the estate and to the distributees and recipients of portions of
21 the augmented estate whose interests will be adversely affected by the taking of the elective share. Except as
22 provided in subsection (2), the decedent's nonprobate transfers to others described in ~~72-2-222(2)(b)~~ [section
23 24 17], is not included within the augmented estate for the purpose of computing the elective share if the petition
24 is filed more than 9 months after the decedent's death.

25 (2) Within 9 months after the decedent's death, the surviving spouse may petition the court for an
26 extension of time for making an election. If, within 9 months after the decedent's death, the spouse gives notice
27 of the petition to all persons interested in the decedent's nonprobate transfers to others the court for cause shown
28 by the surviving spouse may extend the time for election. If the court grants the spouse's petition for an extension,
29 the decedent's nonprobate transfers to others described in ~~72-2-222(2)(b)~~ [section 24 17], is not excluded from
30 the augmented estate for the purpose of computing the elective-share and supplemental elective-share amounts

1 if the spouse makes an election by filing in the court and mailing or delivering to the personal representative, if
2 any, a petition for the elective share within the time allowed by the extension.

3 (3) The surviving spouse may withdraw a demand for an elective share at any time before entry of a final
4 determination by the court.

5 (4) After notice and hearing, the court shall determine the elective-share and supplemental elective-share
6 amounts and shall order its payment from the assets of the augmented estate or by contribution as appears
7 appropriate under ~~72-2-227~~ [section 28 21]. If it appears that a fund or property included in the augmented estate
8 has not come into the possession of the personal representative or has been distributed by the personal
9 representative, the court nevertheless shall fix the liability of any person who has any interest in the fund or
10 property or who has possession thereof, whether as trustee or otherwise. The proceeding may be maintained
11 against fewer than all persons against whom relief could be sought, but no person is subject to contribution in
12 any greater amount than the person would have been under ~~72-2-227~~ [section 28 21] if relief had been secured
13 against all persons subject to contribution.

14 (5) The order or judgment of the court may be enforced as necessary in suit for contribution or payment
15 in other courts of this state or other jurisdictions."
16

17 **Section 25.** Section 72-2-228, MCA, is amended to read:

18 **"72-2-228. Protection of payors and other third parties.** (1) Although under ~~72-2-222~~ [section 24 17]
19 a payment, item of property, or other benefit is included in the decedent's nonprobate transfers to others, a payor
20 or other third party is not liable for having made a payment or transferred an item of property or other benefit to
21 a beneficiary designated in a governing instrument or for having taken any other action in good faith reliance on
22 the validity of a governing instrument, upon request and satisfactory proof of the decedent's death, before the
23 payor or other third party received written notice from the surviving spouse or spouse's representative of an
24 intention to file a petition for the elective share or that a petition for the elective share has been filed. A payor or
25 other third party is liable only for actions taken 2 or more business days after the payor or other third party
26 received written notice of an intention to file a petition for the elective share or that a petition for the elective share
27 has been filed. The written notice must indicate the name of the decedent, the date of the decedent's death, the
28 name of the person asserting an interest, the nature of the payment or item of property or other benefit, and a
29 statement that the spouse intends to file a petition for the elective share or that a petition for the elective share
30 has been filed. Any form of service of notice other than that described in subsection (2) is not sufficient to impose

1 liability on a payor or other third party for actions taken pursuant to the governing instrument.

2 (2) The written notice must be mailed to the payor's or other third party's main office or home by
3 registered or certified mail, return receipt requested, or served upon the payor or other third party in the same
4 manner as a summons in a civil action. Notice to a sales representative of the payor or other third party does not
5 constitute notice to the payor or other third party. Upon receipt of written notice of intention to file a petition for
6 the elective share or that a petition for the elective share has been filed, a payor or other third party may pay any
7 amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the
8 probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the
9 court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the
10 decedent's residence. The availability of an action under this section does not prevent the payor or other third
11 party from taking any other action authorized by law or the governing instrument. If probate proceedings have
12 not been commenced, the payor or other third party shall file with the court a copy of the written notice received
13 by the payor or other third party, with the payment of funds or transfer or deposit of property. The court may not
14 charge a filing fee to the payor or other third party for the payment, transfer, or deposit. The court shall hold the
15 funds or item of property and, upon its determination under 72-2-225(4), shall order disbursement in accordance
16 with the determination. If no petition is filed in the court within the specified time under 72-2-225(1) or, if filed, the
17 demand for an elective share is withdrawn under 72-2-225(3), the court shall order disbursement to the
18 designated beneficiary. A filing fee, if any, may, in the discretion of the court, be charged upon disbursement
19 either to the recipient or against the funds or property on deposit with the court. Payments, transfers, or deposits
20 made to or with the court discharge the payor or other third party from all claims under the governing instrument
21 or applicable law for the value of amounts paid to or items of property transferred to or deposited with the court.

22 (3) Upon petition to the probate court by the beneficiary designated in a governing instrument, the court
23 may order that all or part of the property be paid to the beneficiary in an amount and subject to conditions
24 consistent with this section."

25
26 **Section 26.** Section 72-2-230, MCA, is amended to read:

27 **"72-2-230. Personal liability of recipients.** (1) Only original recipients of the decedent's nonprobate
28 transfers to others, and the donees of the recipients of the decedent's nonprobate transfers to others, to the
29 extent the donees have the property or its proceeds, are liable to make a proportional contribution toward
30 satisfaction of the surviving spouse's elective-share or supplemental elective-share amount. A person liable to

1 make contribution may choose to give up the proportional part of the decedent's nonprobate transfers to the
2 person or to pay the value of the amount for which the person is liable.

3 (2) If any section or part of any section of this part is preempted by federal law with respect to a payment,
4 an item of property, or any other benefit included in the decedent's nonprobate transfers to others, a person who,
5 not for value, receives the payment, item of property, or other benefit is obligated to return that payment, item of
6 property, or benefit or is personally liable for the amount of that payment or the value of that item of property or
7 benefit, as provided in ~~72-2-227~~ [section 28 21], to the person who would have been entitled to it were that
8 section or part of that section not preempted."

9
10 **Section 27.** Section 72-2-412, MCA, is amended to read:

11 **"72-2-412. Homestead allowance.** A decedent's surviving spouse is entitled to a homestead allowance
12 of ~~\$20,000~~ \$22,500. If there is no surviving spouse, each minor child and each dependent child of the decedent
13 is entitled to a homestead allowance amounting to ~~\$20,000~~ \$22,500 divided by the number of minor and
14 dependent children of the decedent. The homestead allowance is exempt from and has priority over all claims
15 against the estate. Homestead allowance is in addition to any share passing to the surviving spouse or minor or
16 dependent child by the will of the decedent unless otherwise provided, by intestate succession, or by way of
17 elective share."

18
19 **Section 28.** Section 72-2-413, MCA, is amended to read:

20 **"72-2-413. Exempt property.** In addition to the homestead allowance, the decedent's surviving spouse
21 is entitled from the estate to a value, not exceeding ~~\$40,000~~ \$15,000 in excess of any security interests therein,
22 in household furniture, automobiles, furnishings, appliances, and personal effects. If there is no surviving spouse,
23 the decedent's children are entitled jointly to the same value. If encumbered chattels are selected and if the value
24 in excess of security interests, plus that of other exempt property, is less than ~~\$40,000~~ \$15,000 or if there is not
25 ~~\$40,000~~ \$15,000 worth of exempt property in the estate, the spouse or children are entitled to other assets of the
26 estate, if any, to the extent necessary to make up the ~~\$40,000~~ \$15,000 value. Rights to exempt property and
27 assets needed to make up a deficiency of exempt property have priority over all claims against the estate, but
28 the right to any assets to make up a deficiency of exempt property abates as necessary to permit earlier payment
29 of homestead allowance and family allowance. These rights are in addition to any benefit or share passing to the
30 surviving spouse or children by the decedent's will unless otherwise provided, by intestate succession, or by way

1 of elective share."

2
3 **Section 29.** Section 72-2-415, MCA, is amended to read:

4 **"72-2-415. Source, determination, and documentation.** (1) If the estate is otherwise sufficient,
5 property specifically devised may not be used to satisfy rights to homestead allowance or exempt property.
6 Subject to this restriction, the surviving spouse, guardians of minor children, or children who are adults may select
7 property of the estate as homestead allowance and exempt property. The personal representative may make
8 those selections if the surviving spouse, the children, or the guardians of the minor children are unable or fail to
9 do so within a reasonable time or if there is no guardian of a minor child. The personal representative may
10 execute an instrument or deed of distribution to establish the ownership of property taken as homestead
11 allowance or exempt property. The personal representative may determine the family allowance in a lump sum
12 not exceeding ~~\$18,000~~ \$27,000 or periodic installments not exceeding ~~\$1,500~~ \$2,250 per month for 1 year and
13 may disburse funds of the estate in payment of the family allowance and any part of the homestead allowance
14 payable in cash. The personal representative or any interested person aggrieved by any selection, determination,
15 payment, proposed payment, or failure to act under this section may petition the court for appropriate relief, which
16 may include a family allowance other than that which the personal representative determined or could have
17 determined.

18 (2) If the right to an elective share is exercised on behalf of a surviving spouse who is an incapacitated
19 person, the personal representative may add any unexpended portions payable under the homestead allowance,
20 exempt property, and family allowance to the trust established under 72-2-223(2)."

21
22 **Section 30.** Section 72-2-613, MCA, is amended to read:

23 **"72-2-613. Antilapse -- deceased devisee -- class gifts.** (1) As used in this section, the following
24 definitions apply:

25 (a) "Alternative devise" means a devise that is expressly created by the will and that under the terms of
26 the will may take effect instead of another devise on the happening of one or more events, including survival of
27 the testator or failure to survive the testator, whether an event is expressed in condition-precedent,
28 condition-subsequent, or any other form. A residuary clause constitutes an alternative devise with respect to a
29 nonresiduary devise only if the will specifically provides that, upon lapse or failure, the nonresiduary devise or
30 nonresiduary devises in general pass under the residuary clause.

(b) "Class member" includes an individual who fails to survive the testator but who would have taken under a devise in the form of a class gift had the individual survived the testator.

(c) "Descendant of a grandparent", as used in subsection (2), means an individual who qualifies as a descendant of a grandparent of the testator or of the donor of a power of appointment under the:

(i) rules of construction applicable to a class gift created in the testator's will if the devise or exercise of the power is in the form of a class gift; or

(ii) rules for intestate succession if the devise or exercise of the power is not in the form of a class gift.

(d) "Descendants", as used in the phrase "surviving descendants" of a deceased devisee or class member in subsections (2)(a) and (2)(b), mean the descendants of a deceased devisee or class member who would take under a class gift created in the testator's will.

~~(e)~~(e) "Devise" includes an alternative devise, a devise in the form of a class gift, and an exercise of a power of appointment.

~~(d)~~(f) "Devisee" includes:

(i) a class member if the devise is in the form of a class gift;

(ii) an individual or class member who was deceased at the time the testator executed the testator's will as well as an individual or class member who was then living but who failed to survive the testator; and

(iii) an appointee under a power of appointment exercised by the testator's will.

~~(e)~~(g) "Stepchild" means a child of the surviving, deceased, or former spouse of the testator or of the donor of a power of appointment but not a child of the testator or donor.

~~(f)~~(h) "Surviving devisee", or in the phrase "surviving descendant devisees" or "surviving descendants" means ~~a devisee or a descendant~~ devisees or descendants who neither predeceased the testator nor is ~~considered~~ deemed to have predeceased the testator under 72-2-712.

~~(g)~~(i) "Testator" includes the donee of a power of appointment if the power is exercised in the testator's will.

(2) If a devisee fails to survive the testator and is a grandparent, a descendant of a grandparent, or a stepchild of either the testator or the donor of a power of appointment exercised by the testator's will, the following apply:

(a) Except as provided in subsection (2)(d), if the devise is not in the form of a class gift and the deceased devisee leaves surviving descendants, a substitute gift is created in the devisee's surviving descendants. They take by representation the property to which the devisee would have been entitled had the

1 devisee survived the testator.

2 (b) Except as provided in subsection (2)(d), if the devise is in the form of a class gift, other than a devise
3 to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives", or "family" or a class described by
4 language of similar import, a substitute gift is created in the surviving descendants of any deceased devisee. The
5 property to which the devisees would have been entitled had all of them survived the testator passes to the
6 surviving devisees and the surviving descendants of the deceased devisees. Each surviving devisee takes the
7 share to which the devisee would have been entitled had the deceased devisees survived the testator. Each
8 deceased devisee's surviving descendants who are substituted for the deceased devisee take by representation
9 the share to which the deceased devisee would have been entitled had the deceased devisee survived the
10 testator. For purposes of this ~~subsection (b)~~ section, "deceased devisee" means a class member who failed to
11 survive the testator and left one or more surviving descendants.

12 (c) For purposes of 72-2-611, words of survivorship, such as in a devise to an individual "if the individual
13 survives me" or in a devise to "my surviving children", are not, in the absence of additional evidence, a sufficient
14 indication of an intent contrary to the application of this section.

15 (d) If the will creates an alternative devise with respect to a devise for which a substitute gift is created
16 by subsection (2)(a) or (2)(b), the substitute gift is superseded by the alternative devise ~~only if an expressly~~
17 ~~designated devisee of the alternative devise is entitled to take under the will. if:~~

18 (i) the alternative devise is in the form of a class gift and one or more members of the class is entitled to
19 take under the will; or

20 (ii) the alternative devise is not in the form of a class gift and the expressly designated devisee of the
21 alternative devise is entitled to take under the will.

22 (e) Unless the language creating a power of appointment expressly excludes the substitution of the
23 descendants of an appointee for the appointee, a surviving descendant of a deceased appointee of a power of
24 appointment may be substituted for the appointee under this section, whether or not the descendant is an object
25 of the power.

26 (3) If, under subsection (2), substitute gifts are created and not superseded with respect to more than
27 one devise and the devises are alternative devises, one to the other, the determination of which of the substitute
28 gifts takes effect is resolved as follows:

29 (a) Except as provided in subsection (3)(b), the devised property passes under the primary substitute
30 gift.

(b) If there is a younger-generation devise, the devised property passes under the younger-generation substitute gift and not under the primary substitute gift.

(c) As used in this subsection (3), the following definitions apply:

(i) "Primary devise" means the devise that would have taken effect had all the deceased devisees of the alternative devises who left surviving descendants survived the testator.

(ii) "Primary substitute gift" means the substitute gift created with respect to the primary devise.

(iii) "Younger-generation devise" means a devise that:

(A) is to a descendant of a devisee of the primary devise;

(B) is an alternative devise with respect to the primary devise;

(C) is a devise for which a substitute gift is created; and

(D) would have taken effect had all the deceased devisees who left surviving descendants survived the testator except the deceased devisee or devisees of the primary devise.

(iv) "Younger-generation substitute gift" means the substitute gift created with respect to the younger-generation devise."

Section 31. Section 72-2-616, MCA, is amended to read:

"72-2-616. Nonademption of specific devises -- unpaid proceeds of sale, condemnation, or insurance -- sale by conservator or agent. (1) A specific devisee has the right to the specifically devised property in the testator's estate at death and:

(a) any balance of the purchase price, together with any security interest, owing from a purchaser to the testator at death by reason of sale of the property;

(b) any amount of a condemnation award for the taking of the property unpaid at death;

(c) any proceeds unpaid at death on fire or casualty insurance on or other recovery for injury to the property;

(d) property owned by the testator at death and acquired as a result of foreclosure or obtained in lieu of foreclosure of the security interest for a specifically devised obligation;

(e) real or tangible personal property owned by the testator at death that the testator acquired as a replacement for specifically devised real or tangible personal property; and

~~(f) unless the facts and circumstances indicate that ademption of the devise was intended by the testator or ademption of the devise is consistent with the testator's manifested plan of distribution, the value of the~~

specifically devised property to the extent the specifically devised property is not in the testator's estate at death and its value or its replacement is not covered by subsections (1)(a) through (1)(e).

(f) if not covered by subsections (1)(a) through (1)(e), a pecuniary devise equal to the value as of its date of disposition of other specifically devised property disposed of during the testator's lifetime but only to the extent it is established that ademption would be inconsistent with the testator's manifested plan of distribution or that at the time the will was made, the date of disposition or otherwise, the testator did not intend ademption of the devise.

(2) If specifically devised property is sold or mortgaged by a conservator or an agent acting within the authority of a durable power of attorney for an incapacitated principal or if a condemnation award, insurance proceeds, or recovery for an injury to property is paid to a conservator or an agent acting within the authority of a durable power of attorney for an incapacitated principal, the specific devisee has the right to a general pecuniary devise equal to the net sale price, the amount of the unpaid loan, the condemnation award, the insurance proceeds, or the recovery.

(3) The right of the specific devisee under subsection (2) is reduced by any right the devisee has under subsection (1).

(4) For the purposes of the references in subsection (2) to a conservator, subsection (2) does not apply if, after the sale, mortgage, condemnation, casualty, or recovery, it was adjudicated that the testator's incapacity ceased and the testator survived the adjudication by 1 year.

(5) For the purposes of the references in subsection (2) to an agent acting within the authority of a durable power of attorney for an incapacitated principal:

(a) "incapacitated principal" means a principal who is an incapacitated person;

(b) no adjudication of incapacity before death is necessary; and

(c) the acts of an agent within the authority of a durable power of attorney are presumed to be for an incapacitated principal."

Section 32. Section 72-2-712, MCA, is amended to read:

"72-2-712. Requirement of survival by 120 hours. (1) For the purposes of chapters 1 through 5, except as provided in subsection (4), an individual who is not established by clear and convincing evidence to have survived an event, including the death of another individual, by 120 hours is ~~considered~~ deemed to have predeceased the event.

(2) Except as provided in subsection (4), for purposes of a provision of a governing instrument that relates to an individual surviving an event, including the death of another individual, an individual who is not established by clear and convincing evidence to have survived the event by 120 hours is ~~considered~~ deemed to have predeceased the event.

(3) (a) Except as provided in subsection (4), if:

(i) it is not established by clear and convincing evidence that one of two co-owners with right of survivorship survived the other co-owner by 120 hours, one-half of the property passes as if one had survived by 120 hours and one-half as if the other had survived by 120 hours; and

(ii) there are more than two co-owners and it is not established by clear and convincing evidence that at least one of them survived the others by 120 hours, the property passes in the proportion that one bears to the whole number of co-owners.

(b) For the purposes of this subsection (3), "co-owners with right of survivorship" includes joint tenants, tenants by the entireties, and other co-owners of property or accounts held under circumstances that entitle one or more to the whole of the property or account on the death of the other or others.

(4) Survival by 120 hours is not required if:

(a) the governing instrument contains language dealing explicitly with simultaneous deaths or deaths in a common disaster and that language is operable under the facts of the case;

(b) the governing instrument expressly indicates that an individual is not required to survive an event, including the death of another individual, by any specified period or expressly requires the individual to survive the event by a specified period. However, survival of the event or the specified period must be established by clear and convincing evidence.

(c) the imposition of a 120-hour requirement of survival would cause a nonvested property interest or a power of appointment to fail to qualify for validity under 72-2-1002(1)(a), (2)(a), or (3)(a) or to become invalid under 72-2-1002(1)(b), (2)(b), or (3)(b); however, survival must be established by clear and convincing evidence; or

(d) the application of a 120-hour requirement of survival to multiple governing instruments would result in an unintended failure or duplication of a disposition. However, survival must be established by clear and convincing evidence.

(5) (a) A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument who, under this section, is not

1 entitled to the payment or item of property, or for having taken any other action in good faith reliance on the
2 beneficiary's apparent entitlement under the terms of the governing instrument, before the payor or other third
3 party received written notice of a claimed lack of entitlement under this section. A payor or other third party is
4 liable for a payment made or other action taken after the payor or other third party received written notice of a
5 claimed lack of entitlement under this section.

6 (b) Written notice of a claimed lack of entitlement under subsection (5)(a) must be mailed to the payor's
7 or other third party's main office or home by registered or certified mail, return receipt requested, or served upon
8 the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice
9 of a claimed lack of entitlement under this section, a payor or other third party may pay any amount owed or
10 transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings
11 relating to the decedent's estate or, if no proceedings have been commenced, to or with the court having
12 jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's
13 residence. The court shall hold the funds or item of property and, upon its determination under this section, shall
14 order disbursement in accordance with the determination. Payments, transfers, or deposits made to or with the
15 court discharge the payor or other third party from all claims for the value of amounts paid to or items of property
16 transferred to or deposited with the court.

17 (6) (a) A person who purchases property for value and without notice or who receives a payment or other
18 item of property in partial or full satisfaction of a legally enforceable obligation is neither obligated under this
19 section to return the payment, item of property, or benefit nor liable under this section for the amount of the
20 payment or the value of the item of property or benefit. However, a person who, not for value, receives a payment,
21 item of property, or other benefit to which the person is not entitled under this section is obligated to return the
22 payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item
23 of property or benefit, to the person who is entitled to it under this section.

24 (b) If this section or any part of this section is preempted by federal law with respect to a payment, an
25 item of property, or any other benefit covered by this section, a person who, not for value, receives the payment,
26 item of property, or other benefit to which the person is not entitled under this section is obligated to return the
27 payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item
28 of property or benefit, to the person who would have been entitled to it were this section or part of this section not
29 preempted."

~~NEW SECTION. Section 33. Class gifts construed to accord with intestate succession --~~

~~exceptions. (1) As used in this section:~~

~~(a) "Adoptee" has the meaning set forth in [section 13]. MEANS AN INDIVIDUAL WHO IS ADOPTED;~~

~~(b) "Child of assisted reproduction" has the meaning set forth in [section 18]. MEANS A CHILD CONCEIVED BY MEANS OF ASSISTED REPRODUCTION BY A WOMAN OTHER THAN A GESTATIONAL CARRIER;~~

~~(c) "Distribution date" means the date when an immediate or postponed class gift takes effect in possession or enjoyment.~~

~~(d) "Functioned as a parent of the adoptee" has the meaning set forth in [section 13], substituting "adoptee" for "child" in that definition. MEANS BEHAVING TOWARD AN ADOPTEE IN A MANNER CONSISTENT WITH BEING THE ADOPTEE'S PARENT AND PERFORMING FUNCTIONS THAT ARE CUSTOMARILY PERFORMED BY A PARENT, INCLUDING FULFILLING PARENTAL RESPONSIBILITIES TOWARD THE ADOPTEE, RECOGNIZING OR HOLDING OUT THE ADOPTEE AS THE INDIVIDUAL'S CHILD, MATERIALLY PARTICIPATING IN THE ADOPTEE'S UPBRINGING, AND RESIDING WITH THE ADOPTEE IN THE SAME HOUSEHOLD AS A REGULAR MEMBER OF THAT HOUSEHOLD.~~

~~(e) "Functioned as a parent of the child" has the meaning set forth in [section 13]. MEANS BEHAVING TOWARD A CHILD IN A MANNER CONSISTENT WITH BEING THE CHILD'S PARENT AND PERFORMING FUNCTIONS THAT ARE CUSTOMARILY PERFORMED BY A PARENT, INCLUDING FULFILLING PARENTAL RESPONSIBILITIES TOWARD THE CHILD; RECOGNIZING OR HOLDING OUT THE CHILD AS THE INDIVIDUAL'S CHILD, MATERIALLY PARTICIPATING IN THE CHILD'S UPBRINGING, AND RESIDING WITH THE CHILD IN THE SAME HOUSEHOLD AS A REGULAR MEMBER OF THAT HOUSEHOLD.~~

~~(f) "Genetic parent" has the meaning set forth in [section 13].~~

~~(g) "Gestational child" has the meaning set forth in [section 19].~~

~~(h)(f) "Relative" has the meaning set forth in [section 13]. MEANS A GRANDPARENT OR A DESCENDANT OF A GRANDPARENT.~~

~~(2) A class gift that uses a term of relationship to identify the class members includes a child of assisted reproduction, a gestational child, and, except as otherwise provided in subsections (5) and (6), an adoptee and a child born to parents who are not married to each other, and their respective descendants if appropriate to the class, in accordance with the rules for intestate succession regarding parent-child relationships. For the purpose of determining whether a contrary intention exists under 72-2-711, a provision in a governing instrument that relates to the inclusion or exclusion in a class gift of a child born to parents who are not married to each other but does not specifically refer to a child of assisted reproduction or a gestational child does not apply to a child of assisted reproduction or a gestational child.~~

1 ~~_____ (3) Terms of relationship in a governing instrument that do not differentiate relationships by blood from~~
2 ~~those by marriage, such as uncles, aunts, nieces, or nephews, are construed to exclude relatives by marriage;~~
3 ~~unless:~~

4 ~~_____ (a) when the governing instrument was executed, the class was then and foreseeably would be empty;~~
5 ~~or~~

6 ~~_____ (b) the language or circumstances otherwise establish that relatives by marriage were intended to be~~
7 ~~included.~~

8 ~~_____ (4) Terms of relationship in a governing instrument that do not differentiate relationships by the half blood~~
9 ~~from those by the whole blood, such as brothers, sisters, nieces, or nephews, are construed to include both types~~
10 ~~of relationships.~~

11 ~~_____ (5) In construing a dispositive provision of a transferor who is not the genetic parent, a child of a genetic~~
12 ~~parent is not considered the child of a genetic parent unless that genetic parent, a relative of the genetic parent,~~
13 ~~or the spouse or surviving spouse of the genetic parent or of a relative of the genetic parent functioned as a~~
14 ~~parent of the child before the child reached 18 years of age.~~

15 ~~_____ (6) In construing a dispositive provision of a transferor who is not the adoptive parent, an adoptee is not~~
16 ~~considered the child of the adoptive parent unless:~~

17 ~~_____ (a) the adoption took place before the adoptee reached 18 years of age;~~

18 ~~_____ (b) the adoptive parent was the adoptee's stepparent or foster parent; or~~

19 ~~_____ (c) the adoptive parent functioned as a parent of the adoptee before the adoptee reached 18 years of~~
20 ~~age.~~

21 ~~_____ (7) The following rules apply for purposes of the class-closing rules:~~

22 ~~_____ (a) A child in utero at a particular time is treated as living at that time if the child lives 120 hours after birth.~~

23 ~~_____ (b) If a child of assisted reproduction or a gestational child is conceived posthumously and the distribution~~
24 ~~date is the deceased parent's death, the child is treated as living on the distribution date if the child lives 120~~
25 ~~hours after birth and was in utero not later than 36 months after the deceased parent's death or born not later than~~
26 ~~45 months after the deceased parent's death.~~

27 ~~_____ (c) An individual who is in the process of being adopted when the class closes is treated as adopted when~~
28 ~~the class closes if the adoption is subsequently granted.~~

29
30 **Section 33.** Section 72-2-716, MCA, is amended to read:

1 **"72-2-716. Life insurance -- retirement plan -- account with POD designation -- transfer-on-death**
2 **registration -- deceased beneficiary.** (1) As used in this section, the following definitions apply:

3 (a) "Alternative beneficiary designation" means a beneficiary designation that is expressly created by
4 the governing instrument and that under the terms of the governing instrument may take effect instead of another
5 beneficiary designation on the happening of one or more events, including survival of the decedent or failure to
6 survive the decedent, whether an event is expressed in condition-precedent, condition-subsequent, or any other
7 form.

8 (b) "Beneficiary" means the beneficiary of a beneficiary designation under which the beneficiary must
9 survive the decedent and includes:

10 (i) a class member if the beneficiary designation is in the form of a class gift; and

11 (ii) an individual or class member who was deceased at the time the beneficiary designation was
12 executed as well as an individual or class member who was then living but who failed to survive the decedent,
13 but excludes a joint tenant of a joint tenancy with the right of survivorship and a party to a joint and survivorship
14 account.

15 (c) "Beneficiary designation" includes an alternative beneficiary designation and a beneficiary designation
16 in the form of a class gift.

17 (d) "Class member" includes an individual who fails to survive the decedent but who would have taken
18 under a beneficiary designation in the form of a class gift had the individual survived the decedent.

19 ~~(e) "Descendant of a grandparent", as used in subsection (2), means an individual who qualifies as a~~
20 ~~descendant of a grandparent of the decedent under the:~~

21 ~~(i) rules of construction applicable to a class gift created in the decedent's beneficiary designation if the~~
22 ~~beneficiary designation is in the form of a class gift; or~~

23 ~~(ii) rules for intestate succession if the beneficiary designation is not in the form of a class gift.~~

24 ~~(f) "Descendants", as used in the phrase "surviving descendants" of a deceased beneficiary or class~~
25 ~~member in subsections (2)(a) and (2)(b), mean the descendants of a deceased beneficiary or class member who~~
26 ~~would take under a class gift created in the beneficiary designation.~~

27 ~~(e)(g)~~ "Stepchild" means a child of the decedent's surviving, deceased, or former spouse but not a child
28 of the decedent.

29 ~~(f)(h) "Surviving beneficiary" or "surviving descendant" means a beneficiary or a descendant "Surviving"~~
30 ~~in the phrase or "surviving beneficiaries" or "surviving descendants", means beneficiaries or descendants who~~

1 neither predeceased the decedent nor ~~is considered~~ are deemed to have predeceased the decedent under
2 72-2-712.

3 (2) If a beneficiary fails to survive the decedent and is a grandparent, a descendant of a grandparent,
4 or a stepchild of the decedent, the following ~~provisions~~ apply:

5 (a) Except as provided in subsection (2)(d), if the beneficiary designation is not in the form of a class gift
6 and the deceased beneficiary leaves surviving descendants, a substitute gift is created in the beneficiary's
7 surviving descendants. They take by representation the property to which the beneficiary would have been
8 entitled had the beneficiary survived the decedent.

9 (b) Except as provided in subsection (2)(d), if the beneficiary designation is in the form of a class gift,
10 other than a beneficiary designation to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives",
11 or "family" or a class described by language of similar import, a substitute gift is created in the surviving
12 descendants of any deceased beneficiary. The property to which the beneficiaries would have been entitled had
13 all of them survived the decedent passes to the surviving beneficiaries and the surviving descendants of the
14 deceased beneficiaries. Each surviving beneficiary takes the share to which the surviving beneficiary would have
15 been entitled had the deceased beneficiaries survived the decedent. Each deceased beneficiary's surviving
16 descendants who are substituted for the deceased beneficiary take by representation the share to which the
17 deceased beneficiary would have been entitled had the deceased beneficiary survived the decedent. For
18 purposes of this subsection (b), "deceased beneficiary" means a class member who failed to survive the decedent
19 and left one or more surviving descendants.

20 (c) For the purposes of 72-2-711, words of survivorship, such as in a beneficiary designation to an
21 individual "if the individual survives me" or in a beneficiary designation to "my surviving children", are not, in the
22 absence of additional evidence, a sufficient indication of an intent contrary to the application of this section.

23 (d) If a governing instrument creates an alternative beneficiary designation with respect to a beneficiary
24 designation for which a substitute gift is created by subsection (2)(a) or (2)(b), the substitute gift is superseded
25 by the alternative beneficiary designation ~~only if an expressly designated beneficiary of the alternative beneficiary~~
26 ~~designation is entitled to take. if:~~

27 (i) the alternative beneficiary designation is in the form of a class gift and one or more members of the
28 class is entitled to take; or

29 (ii) the alternative beneficiary designation is not in the form of a class gift and the expressly designated
30 beneficiary of the alternative beneficiary designation is entitled to take.

(3) If, under subsection (2), substitute gifts are created and not superseded with respect to more than one beneficiary designation and the beneficiary designations are alternative beneficiary designations, one to the other, the determination of which of the substitute gifts takes effect is resolved as follows:

(a) Except as provided in subsection (3)(b), the property passes under the primary substitute gift.

(b) If there is a younger-generation beneficiary designation, the property passes under the younger-generation substitute gift and not under the primary substitute gift.

(c) As used in this subsection (3), the following definitions apply:

(i) "Primary beneficiary designation" means the beneficiary designation that would have taken effect had all the deceased beneficiaries of the alternative beneficiary designations who left surviving descendants survived the decedent.

(ii) "Primary substitute gift" means the substitute gift created with respect to the primary beneficiary designation.

(iii) "Younger-generation beneficiary designation" means a beneficiary designation that:

(A) is to a descendant of a beneficiary of the primary beneficiary designation;

(B) is an alternative beneficiary designation with respect to the primary beneficiary designation;

(C) is a beneficiary designation for which a substitute gift is created; and

(D) would have taken effect had all the deceased beneficiaries who left surviving descendants survived the decedent except the deceased beneficiary or beneficiaries of the primary beneficiary designation.

(iv) "Younger-generation substitute gift" means the substitute gift created with respect to the younger-generation beneficiary designation.

(4) (a) A payor is protected from liability in making payments under the terms of the beneficiary designation until the payor has received written notice of a claim to a substitute gift under this section. Payment made before the receipt of written notice of a claim to a substitute gift under this section discharges the payor, but not the recipient, from all claims for the amounts paid. A payor is liable for a payment made after the payor has received written notice of the claim. A recipient is liable for a payment received, whether or not written notice of the claim is given.

(b) The written notice of the claim must be mailed to the payor's main office or home by certified mail, return receipt requested, or served upon the payor in the same manner as a summons in a civil action. Upon receipt of written notice of the claim, a payor may pay any amount owed by it to the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to the

1 court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the
2 decedent's residence. The court shall hold the funds and, upon its determination under this section, shall order
3 disbursement in accordance with the determination. Payment made to the court discharges the payor from all
4 claims for the amounts paid.

5 (5) (a) A person who purchases property for value and without notice or who receives a payment or other
6 item of property in partial or full satisfaction of a legally enforceable obligation is neither obligated under this
7 section to return the payment, item of property, or benefit nor liable under this section for the amount of the
8 payment or the value of the item of property or benefit. However, a person who, not for value, receives a payment,
9 item of property, or other benefit to which the person is not entitled under this section is obligated to return the
10 payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item
11 of property or benefit, to the person who is entitled to it under this section.

12 (b) If this section or any part of this section is preempted by federal law with respect to a payment, an
13 item of property, or any other benefit covered by this section, a person who, not for value, receives the payment,
14 item of property, or other benefit to which the person is not entitled under this section is obligated to return the
15 payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item
16 of property or benefit, to the person who would have been entitled to it were this section or part of this section not
17 preempted."

18
19 **Section 34.** Section 72-2-717, MCA, is amended to read:

20 **"72-2-717. Survivorship with respect to future interests under terms of trust -- substitute takers.**

21 (1) As used in this section, the following definitions apply:

22 (a) "Alternative future interest" means an expressly created future interest that may take effect in
23 possession or enjoyment instead of another future interest on the happening of one or more events, including
24 survival of an event or failure to survive an event, whether an event is expressed in condition-precedent,
25 condition-subsequent, or any other form. A residuary clause in a will does not create an alternative future interest
26 with respect to a future interest created in a nonresiduary devise in the will, whether or not the will specifically
27 provides that lapsed or failed devises are to pass under the residuary clause.

28 (b) "Beneficiary" means the beneficiary of a future interest and includes a class member if the future
29 interest is in the form of a class gift.

30 (c) "Class member" includes an individual who fails to survive the distribution date but who would have

1 taken under a future interest in the form of a class gift had the individual survived the distribution date.

2 (d) "Descendants", in the phrase "surviving descendants" of a deceased beneficiary or class member in
3 subsections (2)(a) and (2)(b), mean the descendants of a deceased beneficiary or class member who would take
4 under a class gift created in the trust.

5 ~~(d)~~(e) "Distribution date" with respect to a future interest means the time when the future interest is to
6 take effect in possession or enjoyment. The distribution date need not occur at the beginning or end of a calendar
7 day, but may occur at a time during the course of a day.

8 ~~(e)~~(f) "Future interest" includes an alternative future interest and a future interest in the form of a class
9 gift.

10 ~~(f)~~(g) "Future interest under the terms of a trust" means a future interest that was created by a transfer
11 creating a trust or to an existing trust or by an exercise of a power of appointment to an existing trust that directs
12 the continuance of an existing trust, designates a beneficiary of an existing trust, or creates a trust.

13 ~~(g)~~(h) "~~Surviving beneficiary" or "surviving descendant" means a beneficiary or a descendant~~ "Surviving
14 in the phrase "surviving beneficiaries" or "surviving descendants" means beneficiaries or descendants who
15 neither predeceased the distribution date nor ~~is considered~~ are deemed to have predeceased the distribution date
16 under 72-2-712.

17 (2) A future interest under the terms of a trust is contingent on the beneficiary surviving the distribution
18 date. If a beneficiary of a future interest under the terms of a trust fails to survive the distribution date, the
19 following provisions apply:

20 (a) Except as provided in subsection (2)(d), if the future interest is not in the form of a class gift and the
21 deceased beneficiary leaves surviving descendants, a substitute gift is created in the beneficiary's surviving
22 descendants. They take by representation the property to which the beneficiary would have been entitled had
23 the beneficiary survived the distribution date.

24 (b) Except as provided in subsection (2)(d), if the future interest is in the form of a class gift, other than
25 a future interest to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives", or "family" or a
26 class described by language of similar import, a substitute gift is created in the surviving descendants of any
27 deceased beneficiary. The property to which the beneficiaries would have been entitled had all of them survived
28 the distribution date passes to the surviving beneficiaries and the surviving descendants of the deceased
29 beneficiaries. Each surviving beneficiary takes the share to which the surviving beneficiary would have been
30 entitled had the deceased beneficiaries survived the distribution date. Each deceased beneficiary's surviving

1 descendants who are substituted for the deceased beneficiary take by representation the share to which the
2 deceased beneficiary would have been entitled had the deceased beneficiary survived the distribution date. For
3 purposes of this subsection (2), "deceased beneficiary" means a class member who failed to survive the
4 distribution date and left one or more surviving descendants.

5 (c) For the purposes of 72-2-711, words of survivorship attached to a future interest are not, in the
6 absence of additional evidence, a sufficient indication of an intent contrary to the application of this section. Words
7 of survivorship include words of survivorship that relate to the distribution date or to an earlier or an unspecified
8 time, whether those words of survivorship are expressed in condition-precedent, condition-subsequent, or any
9 other form.

10 (d) If a governing instrument creates an alternative future interest with respect to a future interest for
11 which a substitute gift is created by subsection (2)(a) or (2)(b), the substitute gift is superseded by the alternative
12 future interest only if an if:

13 (i) the alternative future interest is in the form of a class gift and one or more members of the class is
14 entitled to take in possession or enjoyment; or

15 (ii) the alternative future interest is not in the form of a class gift and the expressly designated beneficiary
16 of the alternative future interest is entitled to take in possession or enjoyment.

17 (3) If, under subsection (2), substitute gifts are created and not superseded with respect to more than
18 one future interest and the future interests are alternative future interests, one to the other, the determination of
19 which of the substitute gifts takes effect is resolved as follows:

20 (a) Except as provided in subsection (3)(b), the property passes under the primary substitute gift.

21 (b) If there is a younger-generation future interest, the property passes under the younger-generation
22 substitute gift and not under the primary substitute gift.

23 (c) As used in this subsection (3), the following definitions apply:

24 (i) "Primary future interest" means the future interest that would have taken effect had all the deceased
25 beneficiaries of the alternative future interests who left surviving descendants survived the distribution date.

26 (ii) "Primary substitute gift" means the substitute gift created with respect to the primary future interest.

27 (iii) "Younger-generation future interest" means a future interest that:

28 (A) is to a descendant of a beneficiary of the primary future interest;

29 (B) is an alternative future interest with respect to the primary future interest;

30 (C) is a future interest for which a substitute gift is created; and

(D) would have taken effect had all the deceased beneficiaries who left surviving descendants survived the distribution date except the deceased beneficiary or beneficiaries of the primary future interest.

(iv) "Younger-generation substitute gift" means the substitute gift created with respect to the younger-generation future interest.

(4) Except as provided in subsection (5), if, after the application of subsections (2) and (3), there is no surviving taker, the property passes in the following order:

(a) if the trust was created in a nonresiduary devise in the transferor's will or in a codicil to the transferor's will, the property passes under the residuary clause in the transferor's will. For purposes of this section, the residuary clause is treated as creating a future interest under the terms of a trust.

(b) if no taker is produced by the application of subsection (4)(a), the property passes to the transferor's heirs under 72-2-721.

(5) If, after the application of subsections (2) and (3), there is no surviving taker and if the future interest was created by the exercise of a power of appointment:

(a) the property passes under the donor's gift-in-default clause, if any, which clause is treated as creating a future interest under the terms of a trust; and

(b) if no taker is produced by the application of subsection (5)(a), the property passes as provided in subsection (4). For purposes of subsection (4), "transferor" means the donor if the power was a nongeneral power and means the donee if the power was a general power."

Section 35. Section 72-2-813, MCA, is amended to read:

"72-2-813. Effect of homicide on intestate succession, wills, trusts, joint assets, life insurance, and beneficiary designations. (1) For purposes of this section, the following definitions apply:

(a) "Disposition or appointment of property" includes a transfer of an item of property or any other benefit to a beneficiary designated in a governing instrument.

(b) "Governing instrument" means a governing instrument executed by the decedent.

(c) "Revocable", with respect to a disposition, appointment, provision, or nomination, means one under which the decedent, at the time of or immediately before death, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of the killer, whether or not the decedent was then empowered to designate the decedent in place of the decedent's killer and whether or not the decedent then had capacity to exercise the power.

(2) An individual who feloniously and intentionally kills the decedent forfeits all benefits under this chapter with respect to the decedent's estate, including an intestate share, an elective share, an omitted spouse's or child's share, a homestead allowance, exempt property, and a family allowance. If the decedent died intestate, the decedent's intestate estate passes as if the killer disclaimed the killer's intestate share.

(3) The felonious and intentional killing of the decedent:

(a) revokes any revocable:

(i) disposition or appointment of property made by the decedent to the killer in a governing instrument;

(ii) provision in a governing instrument conferring a general or nongeneral power of appointment on the killer; and

(iii) nomination of the killer in a governing instrument, nominating or appointing the killer to serve in any fiduciary or representative capacity, including a personal representative, executor, trustee, or agent; and

(b) severs the interests of the decedent and killer in property held by them at the time of the killing as joint tenants with the right of survivorship and transforms the interests of the decedent and killer into tenancies in common.

(4) A severance under subsection (3)(b) does not affect any third-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the killer unless a writing declaring the severance has been noted, registered, filed, or recorded in records appropriate to the kind and location of the property, which records are relied upon, in the ordinary course of transactions involving such property, as evidence of ownership.

(5) Provisions of a governing instrument are given effect as if the killer disclaimed all provisions revoked by this section or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the killer predeceased the decedent.

(6) A wrongful acquisition of property or interest by a killer not covered by this section must be treated in accordance with the principle that a killer cannot profit from the killer's wrong.

(7) After all right to appeal has been exhausted, a judgment of conviction establishing criminal accountability for the felonious and intentional killing of the decedent conclusively establishes the convicted individual as the decedent's killer for purposes of this section. In the absence of a conviction, the court, upon the petition of an interested person, shall determine whether, under the preponderance of evidence standard, the individual would be found criminally accountable for the felonious and intentional killing of the decedent. If the court determines that under that standard the individual would be found criminally accountable for the felonious

1 and intentional killing of the decedent, the determination conclusively establishes that individual as the decedent's
2 killer for purposes of this section.

3 (8) (a) A payor or other third party is not liable for having made a payment or transferred an item of
4 property or any other benefit to a beneficiary designated in a governing instrument affected by an intentional and
5 felonious killing, or for having taken any other action in good faith reliance on the validity of the governing
6 instrument, upon request and satisfactory proof of the decedent's death, before the payor or other third party
7 received written notice of a claimed forfeiture or revocation under this section. A payor or other third party does
8 not have a duty or obligation to make any determination as to whether the decedent was a victim of a homicide
9 or to seek any evidence with respect to a homicide even if the circumstances of the decedent's death are
10 suspicious or questionable as to the beneficiary's participation in a homicide. A payor or other third party is only
11 liable for actions taken 2 or more business days after the actual receipt by the payor or other third party of written
12 notice. The payor or other third party may be liable for actions taken pursuant to the governing instrument only
13 if the form of the service is that described in subsection (8)(b).

14 (b) The written notice must indicate the name of the decedent, the name of the person asserting an
15 interest, the nature of the payment or item of property or other benefit, and a statement that a claim of forfeiture
16 or revocation is being made under this section. Written notice of a claimed forfeiture or revocation under
17 subsection (8)(a) must be mailed to the payor's or other third party's main office or home by certified mail, return
18 receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil
19 action. Notice to a sales representative of the payor or other third party does not constitute notice to the payor
20 or other third party. Upon receipt of written notice of a claimed forfeiture or revocation under this section, a payor
21 or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the
22 court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have
23 been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates
24 located in the county of the decedent's residence. In addition to the actions available under this section, the payor
25 or other third party may take any action authorized by law or the governing instrument. If probate proceedings
26 have not been commenced, the payor or other third party shall file with the court a copy of the written notice
27 received by the payor or other third party, with the payment of funds or transfer or deposit of property. The court
28 may not charge a filing fee to the payor or other third party for the payment to the court of amounts owed or
29 transferred to or deposited with the court or any item of property. The court shall hold the funds or item of property
30 and, upon its determination under this section, shall order disbursement in accordance with the determination.

1 A filing fee, if any, may be charged upon disbursement either to the recipient or against the funds or property on
2 deposit with the court, in the discretion of the court. Payments, transfers, or deposits made to or with the court
3 discharge the payor or other third party from all claims for the value of amounts paid to or items of property
4 transferred to or deposited with the court.

5 (9) (a) A bona fide purchaser who purchases property or who receives a payment or other item of
6 property in partial or full satisfaction of a legally enforceable obligation is neither obligated under this section to
7 return the payment, item of property, or benefit nor liable under this section for the amount of the payment or the
8 value of the item of property or benefit. However, a person who, not for value, receives a payment, item of
9 property, or other benefit to which the person is not entitled under this section is obligated to return the payment,
10 item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of
11 property or benefit, to the person who is entitled to it under this section.

12 (b) If this section or any part of this section is preempted by federal law, ~~other than the federal Employee~~
13 ~~Retirement Income Security Act of 1974, as amended~~, with respect to a payment, an item of property, or any
14 other benefit covered by this section, a person who, not for value, receives the payment, item of property, or other
15 benefit to which the person is not entitled under this section is obligated to return the payment, item of property,
16 or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to
17 the person who would have been entitled to it were this section or part of this section not preempted.

18 (10) For the purposes of this section, a felonious and intentional killing includes a deliberate homicide
19 as defined in 45-5-102 and a mitigated deliberate homicide as defined in 45-5-103."
20

21 **Section 36.** Section 72-2-814, MCA, is amended to read:

22 **"72-2-814. Revocation of probate and nonprobate transfers by divorce -- no revocation by other**
23 **changes of circumstances.** (1) As used in this section, the following definitions apply:

24 (a) "Disposition or appointment of property" includes a transfer of an item of property or any other benefit
25 to a beneficiary designated in a governing instrument.

26 (b) "Divorce or annulment" means any divorce, annulment, or dissolution or declaration of invalidity of
27 a marriage that would exclude the spouse as a surviving spouse within the meaning of 72-2-812. A decree of
28 separation that does not terminate the status of husband and wife is not a divorce for purposes of this section.

29 (c) "Divorced individual" includes an individual whose marriage has been annulled.

30 (d) "Governing instrument" means a governing instrument executed by the divorced individual before

1 the divorce or annulment of the individual's marriage to the individual's former spouse.

2 (e) "Relative of the divorced individual's former spouse" means an individual who is related to the
3 divorced individual's former spouse by blood, adoption, or affinity and who, after the divorce or annulment, is not
4 related to the divorced individual by blood, adoption, or affinity.

5 (f) "Revocable", with respect to a disposition, appointment, provision, or nomination, means one under
6 which the divorced individual, at the time of the divorce or annulment, was alone empowered, by law or under
7 the governing instrument, to cancel the designation in favor of the individual's former spouse or former spouse's
8 relative, whether or not the divorced individual was then empowered to designate the divorced individual in place
9 of the individual's former spouse or in place of the former spouse's relative and whether or not the divorced
10 individual then had the capacity to exercise the power.

11 (2) Except as to a retirement system established in Title 19 or as provided by the express terms of a
12 governing instrument, a court order, or a contract relating to the division of the marital estate made between the
13 divorced individuals before or after the marriage, divorce, or annulment, the divorce or annulment of a marriage:

14 (a) revokes any revocable:

15 (i) disposition or appointment of property made by a divorced individual to the individual's former spouse
16 in a governing instrument and any disposition or appointment created by law or in a governing instrument to a
17 relative of the divorced individual's former spouse;

18 (ii) provision in a governing instrument conferring a general or nongeneral power of appointment on the
19 divorced individual's former spouse or on a relative of the divorced individual's former spouse; and

20 (iii) nomination in a governing instrument that nominates a divorced individual's former spouse or a
21 relative of the divorced individual's former spouse to serve in any fiduciary or representative capacity, including
22 a personal representative, executor, trustee, conservator, agent, or guardian; and

23 (b) severs the interests of the former spouses in property held by them at the time of the divorce or
24 annulment as joint tenants with the right of survivorship and transforms the interests of the former spouses into
25 tenancies in common.

26 (3) A severance under subsection (2)(b) does not affect any third-party interest in property acquired for
27 value and in good faith reliance on an apparent title by survivorship in the survivor of the former spouses unless
28 a writing declaring the severance has been noted, registered, filed, or recorded in records appropriate to the kind
29 and location of the property, which records are relied upon, in the ordinary course of transactions involving such
30 property, as evidence of ownership.

1 (4) Provisions of a governing instrument are given effect as if the former spouse and relatives of the
2 former spouse disclaimed all provisions revoked by this section or, in the case of a revoked nomination in a
3 fiduciary or representative capacity, as if the former spouse and relatives of the former spouse died immediately
4 before the divorce or annulment.

5 (5) Provisions revoked solely by this section are revived by the divorced individual's remarriage to the
6 former spouse or by a nullification of the divorce or annulment.

7 (6) No change of circumstances other than as described in this section and in 72-2-813 effects a
8 revocation.

9 (7) (a) A payor or other third party is not liable for having made a payment or transferred an item of
10 property or any other benefit to a beneficiary designated in a governing instrument affected by a divorce,
11 annulment, or remarriage, or for having taken any other action in good faith reliance on the validity of the
12 governing instrument, before the payor or other third party received written notice of the divorce, annulment, or
13 remarriage. A payor or other third party does not have a duty or obligation to inquire as to the continued marital
14 relationship between the decedent and a beneficiary or to seek any evidence with respect to a marital
15 relationship. A payor or other third party is only liable for actions taken 2 or more business days after the actual
16 receipt by the payor or other third party of written notice. The payor or other third party may be liable for actions
17 taken pursuant to the governing instrument only if the form of service is that described in subsection (7)(b).

18 (b) The written notice must indicate the name of the decedent, the name of the person asserting an
19 interest, the nature of the payment or item of property or other benefit, and a statement that a dissolution,
20 annulment, or remarriage of the decedent and the designated beneficiary occurred. Written notice of the divorce,
21 annulment, or remarriage under subsection (7)(a) must be mailed to the payor's or other third party's main office
22 or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in
23 the same manner as a summons in a civil action. Upon receipt of written notice of the divorce, annulment, or
24 remarriage, a payor or other third party may pay any amount owed or transfer or deposit any item of property held
25 by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no
26 proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to
27 decedents' estates located in the county of the decedent's residence. In addition to the actions available under
28 this section, the payor or other third party may take any action authorized by law or the governing instrument. If
29 probate proceedings have not been commenced, the payor or other third party shall file with the court a copy of
30 the written notice received by the payor or other third party, with the payment of funds or transfer or deposit of

1 property. The court may not charge a filing fee to the payor or other third party for the payment to the court of
2 amounts owed or transferred to or deposited with the court or any item of property. The court shall hold the funds
3 or item of property and, upon its determination under this section, shall order disbursement or transfer in
4 accordance with the determination. A filing fee, if any, may, in the discretion of the court, be charged upon
5 disbursement either to the recipient or against the funds or property on deposit with the court. Payments,
6 transfers, or deposits made to or with the court discharge the payor or other third party from all claims for the
7 value of amounts paid to or items of property transferred to or deposited with the court.

8 (8) (a) A bona fide purchaser who purchases property from a former spouse, relative of a former spouse,
9 or any other person or who receives from a former spouse, relative of a former spouse, or any other person for
10 value and without notice a payment or other item of property in partial or full satisfaction of a legally enforceable
11 obligation is neither obligated under this section to return the payment, item of property, or benefit nor liable under
12 this section for the amount of the payment or the value of the item of property or benefit. However, a former
13 spouse, relative of a former spouse, or other person who, not for value, received a payment, item of property, or
14 other benefit to which that person is not entitled under this section is obligated to return the payment, item of
15 property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or
16 benefit, to the person who is entitled to it under this section.

17 (b) If this section or any part of this section is preempted by federal law, ~~other than the federal Employee~~
18 ~~Retirement Income Security Act of 1974, as amended~~, with respect to a payment, an item of property, or any
19 other benefit covered by this section, a former spouse, relative of the former spouse, or any other person who,
20 not for value, received a payment, item of property, or other benefit to which that person is not entitled under this
21 section is obligated to return that payment, item of property, or benefit, or is personally liable for the amount of
22 the payment or the value of the item of property or benefit, to the person who would have been entitled to it were
23 this section or part of this section not preempted.

24 (9) The provisions of this section apply to testate and intestate estates, and in the event of a conflict
25 between the provisions of this section and those provided in chapters 1 through 5 and chapter 16, part 6, of this
26 title, the provisions of this section control. This subsection does not apply if a divorced individual designates a
27 former spouse as personal representative of the estate subsequent to the divorce."
28

29 **NEW SECTION. Section 37. Reformation to correct mistakes.** The court may reform the terms of
30 a governing instrument, even if unambiguous, to conform the terms to the transferor's intention if it is proved by

1 clear and convincing evidence what the transferor's intention was and that the terms of the governing instrument
2 were affected by a mistake of fact or law, whether in expression or inducement.

3
4 **NEW SECTION. Section 38. Modification to achieve transferor's tax objectives.** To achieve the
5 transferor's tax objectives, the court may modify the terms of a governing instrument in a manner that is not
6 contrary to the transferor's probable intention. The court may provide that the modification has retroactive effect.

7
8 **NEW SECTION. Section 39. Short title.** [Sections ~~47 through 63~~ ~~40 THROUGH 56~~ 39 THROUGH 55] may
9 be cited as the "Uniform Disclaimer of Property Interests Act".

10
11 **NEW SECTION. Section 40. Definitions.** As used in [sections ~~47 through 63~~ ~~40 THROUGH 56~~ 39
12 ~~THROUGH 55~~] the following definitions apply:

13 (1) "Disclaimant" means the person to whom a disclaimed interest or power would have passed had the
14 disclaimer not been made.

15 (2) "Disclaimed interest" means the interest that would have passed to the disclaimant had the disclaimer
16 not been made.

17 (3) "Disclaimer" means the refusal to accept an interest in or power over property.

18 (4) "Fiduciary" means a personal representative, trustee, agent acting under a power of attorney, or other
19 person authorized to act as a fiduciary with respect to the property of another person.

20 (5) "Jointly held property" means property held in the name of two or more persons under an arrangement
21 in which all holders have concurrent interests and under which the last surviving holder is entitled to the whole
22 of the property.

23 (6) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability
24 company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public
25 corporation, or any other legal or commercial entity.

26 (7) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States
27 Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term
28 includes an Indian tribe or band, or Alaskan native village, recognized by federal law or formally acknowledged
29 by a state.

30 (8) "Trust" means:

1 (a) an express trust, charitable or noncharitable, with additions thereto, whenever and however created;
2 and

3 (b) a trust created pursuant to a statute, judgment, or decree which requires the trust to be administered
4 in the manner of an express trust.

5
6 **NEW SECTION. Section 41. Scope.** [Sections ~~47 through 63~~ ~~40 THROUGH 56~~ 39 THROUGH 55] applies
7 to disclaimers of any interest in or power over property, whenever created.

8
9 **NEW SECTION. Section 42. [Sections ~~47 through 63~~ ~~40 THROUGH 56~~ 39 THROUGH 55] supplemented**
10 **by other law.** (1) Unless displaced by a provision of [sections ~~47 through 63~~ ~~40 THROUGH 56~~ 39 THROUGH 55],
11 the principles of law and equity supplement [sections ~~47 through 63~~ ~~40 THROUGH 56~~ 39 THROUGH 55].

12 (2) [Sections ~~47 through 63~~ ~~40 THROUGH 56~~ 39 THROUGH 55] do not limit any right of a person to waive,
13 release, disclaim, or renounce an interest in or power over property under a law other than [sections ~~47 through~~
14 ~~63~~ ~~40 THROUGH 56~~ 39 THROUGH 55].

15
16 **NEW SECTION. Section 43. Power to disclaim -- general requirements -- when revocable.** (1) A
17 person may disclaim, in whole or part, any interest in or power over property, including a power of appointment.
18 A person may disclaim the interest or power even if its creator imposed a spendthrift provision or similar
19 restriction on transfer or a restriction or limitation on the right to disclaim.

20 (2) Except to the extent a fiduciary's right to disclaim is expressly restricted or limited by another statute
21 of this state or by the instrument creating the fiduciary relationship, a fiduciary may disclaim, in whole or part, any
22 interest in or power over property, including a power of appointment, whether acting in a personal or
23 representative capacity. A fiduciary may disclaim the interest or power even if its creator imposed a spendthrift
24 provision or similar restriction on transfer or a restriction or limitation on the right to disclaim or an instrument other
25 than the instrument that created the fiduciary relationship imposed a restriction or limitation on the right to
26 disclaim.

27 (3) To be effective, a disclaimer must be in a writing or other record, declare the disclaimer, describe the
28 interest or power disclaimed, be signed by the person making the disclaimer, and be delivered or filed in the
29 manner provided in [section ~~58~~ ~~54~~ 50]. In this subsection:

30 (a) "record" means information that is inscribed on a tangible medium or that is stored in an electronic

or other medium and is retrievable in perceivable form; and

(b) "signed" means, with present intent to authenticate or adopt a record, to:

(i) execute or adopt a tangible symbol; or

(ii) attach to or logically associate with the record an electronic sound, symbol, or process.

(4) A partial disclaimer may be expressed as a fraction, percentage, monetary amount, term of years, limitation of a power, or any other interest or estate in the property.

(5) A disclaimer becomes irrevocable when it is delivered or filed pursuant to [section ~~58~~ ~~54~~ 50] or when it becomes effective as provided in [sections ~~52 through 57~~ ~~45 THROUGH 50~~ 44 THROUGH 49], whichever occurs later.

(6) A disclaimer made under [sections ~~47 through 63~~ ~~40 THROUGH 56~~ 39 THROUGH 55] is not a transfer, assignment, or release.

NEW SECTION. Section 44. Disclaimer of interest in property. (1) In this section:

(a) "Future interest" means an interest that takes effect in possession or enjoyment, if at all, later than the time of its creation.

(b) "Time of distribution" means the time when a disclaimed interest would have taken effect in possession or enjoyment.

(2) Except for a disclaimer governed by [section ~~53 or 54~~ ~~46 OR 47~~ 45 OR 46], the following rules apply to a disclaimer of an interest in property:

(a) The disclaimer takes effect as of the time the instrument creating the interest becomes irrevocable, or, if the interest arose under the law of intestate succession, as of the time of the intestate's death.

(b) The disclaimed interest passes according to any provision in the instrument creating the interest providing for the disposition of the interest, should it be disclaimed, or of disclaimed interests in general.

(c) If the instrument does not contain a provision described in subsection (2)(b), the following rules apply:

(i) If the disclaimant is not an individual, the disclaimed interest passes as if the disclaimant did not exist.

(ii) If the disclaimant is an individual, except as otherwise provided in subsections (2)(c)(iii) and (2)(c)(iv), the disclaimed interest passes as if the disclaimant had died immediately before the time of distribution.

(iii) If by law or under the instrument, the descendants of the disclaimant would share in the disclaimed interest by any method of representation had the disclaimant died before the time of distribution, the disclaimed interest passes only to the descendants of the disclaimant who survive the time of distribution.

(iv) If the disclaimed interest would pass to the disclaimant's estate had the disclaimant died before the time of distribution, the disclaimed interest instead passes by representation to the descendants of the disclaimant who survive the time of distribution. If no descendant of the disclaimant survives the time of distribution, the disclaimed interest passes to those persons, including the state but excluding the disclaimant, and in such shares as would succeed to the transferor's intestate estate under the intestate succession law of the transferor's domicile had the transferor died at the time of distribution. However, if the transferor's surviving spouse is living but is remarried at the time of distribution, the transferor is deemed to have died unmarried at the time of distribution.

(d) Upon the disclaimer of a preceding interest, a future interest held by a person other than the disclaimant takes effect as if the disclaimant had died or ceased to exist immediately before the time of distribution, but a future interest held by the disclaimant is not accelerated in possession or enjoyment.

NEW SECTION. Section 45. Disclaimer of rights of survivorship in jointly held property. (1) Upon the death of a holder of jointly held property, a surviving holder may disclaim, in whole or part, the greater of:

(a) a fractional share of the property determined by dividing the number one by the number of joint holders alive immediately before the death of the holder to whose death the disclaimer relates; or

(b) all of the property except that part of the value of the entire interest attributable to the contribution furnished by the disclaimant.

(2) A disclaimer under subsection (1) takes effect as of the death of the holder of jointly held property to whose death the disclaimer relates.

(3) An interest in jointly held property disclaimed by a surviving holder of the property passes as if the disclaimant predeceased the holder to whose death the disclaimer relates.

NEW SECTION. Section 46. Disclaimer of interest by trustee. If a trustee disclaims an interest in property that otherwise would have become trust property, the interest does not become trust property.

NEW SECTION. Section 47. Disclaimer of power of appointment or other power not held in fiduciary capacity. If a holder disclaims a power of appointment or other power not held in a fiduciary capacity, the following rules apply:

(1) If the holder has not exercised the power, the disclaimer takes effect as of the time the instrument

1 creating the power becomes irrevocable.

2 (2) If the holder has exercised the power and the disclaimer is of a power other than a presently
3 exercisable general power of appointment, the disclaimer takes effect immediately after the last exercise of the
4 power.

5 (3) The instrument creating the power is construed as if the power expired when the disclaimer became
6 effective.

7
8 **NEW SECTION. Section 48. Disclaimer by appointee, object, or taker in default of exercise of**
9 **power of appointment.** (1) A disclaimer of an interest in property by an appointee of a power of appointment
10 takes effect as of the time the instrument by which the holder exercises the power becomes irrevocable.

11 (2) A disclaimer of an interest in property by an object or taker in default of an exercise of a power of
12 appointment takes effect as of the time the instrument creating the power becomes irrevocable.

13
14 **NEW SECTION. Section 49. Disclaimer of power held in fiduciary capacity.** (1) If a fiduciary disclaims
15 a power held in a fiduciary capacity which has not been exercised, the disclaimer takes effect as of the time the
16 instrument creating the power becomes irrevocable.

17 (2) If a fiduciary disclaims a power held in a fiduciary capacity which has been exercised, the disclaimer
18 takes effect immediately after the last exercise of the power.

19 (3) A disclaimer under this section is effective as to another fiduciary if the disclaimer so provides and
20 the fiduciary disclaiming has the authority to bind the estate, trust, or other person for whom the fiduciary is acting.

21
22 **NEW SECTION. Section 50. Delivery or filing.** (1) In this section, "beneficiary designation" means an
23 instrument, other than an instrument creating a trust, naming the beneficiary of:

24 (a) an annuity or insurance policy;

25 (b) an account with a designation for payment on death;

26 (c) a security registered in beneficiary form;

27 (d) a pension, profit-sharing, retirement, or other employment-related benefit plan; or

28 (e) any other nonprobate transfer at death.

29 (2) Subject to subsections (3) through (12), delivery of a disclaimer may be effected by personal delivery,
30 first-class mail, or any other method likely to result in its receipt.

1 (3) In the case of an interest created under the law of intestate succession or an interest created by will,
2 other than an interest in a testamentary trust:

3 (a) a disclaimer must be delivered to the personal representative of the decedent's estate; or

4 (b) if no personal representative is then serving, it must be filed with a court having jurisdiction to appoint
5 the personal representative.

6 (4) In the case of an interest in a testamentary trust:

7 (a) a disclaimer must be delivered to the trustee then serving, or if no trustee is then serving, to the
8 personal representative of the decedent's estate; or

9 (b) if no personal representative is then serving, it must be filed with a court having jurisdiction to enforce
10 the trust.

11 (5) In the case of an interest in an inter vivos trust:

12 (a) a disclaimer must be delivered to the trustee then serving;

13 (b) if no trustee is then serving, it must be filed with a court having jurisdiction to enforce the trust; or

14 (c) if the disclaimer is made before the time the instrument creating the trust becomes irrevocable, it must
15 be delivered to the settlor of a revocable trust or the transferor of the interest.

16 (6) In the case of an interest created by a beneficiary designation which is disclaimed before the
17 designation becomes irrevocable, the disclaimer must be delivered to the person making the beneficiary
18 designation.

19 (7) In the case of an interest created by a beneficiary designation which is disclaimed after the
20 designation becomes irrevocable:

21 (a) the disclaimer of an interest in personal property must be delivered to the person obligated to
22 distribute the interest; and

23 (b) the disclaimer of an interest in real property must be recorded in the office of the county recorder of
24 the county where the real property that is the subject of the disclaimer is located.

25 (8) In the case of a disclaimer by a surviving holder of jointly held property, the disclaimer must be
26 delivered to the person to whom the disclaimed interest passes.

27 (9) In the case of a disclaimer by an object or taker in default of exercise of a power of appointment at
28 any time after the power was created:

29 (a) the disclaimer must be delivered to the holder of the power or to the fiduciary acting under the
30 instrument that created the power; or

(b) if no fiduciary is then serving, it must be filed with a court having authority to appoint the fiduciary.

(10) In the case of a disclaimer by an appointee of a nonfiduciary power of appointment:

(a) the disclaimer must be delivered to the holder, the personal representative of the holder's estate or to the fiduciary under the instrument that created the power; or

(b) if no fiduciary is then serving, it must be filed with a court having authority to appoint the fiduciary.

(11) In the case of a disclaimer by a fiduciary of a power over a trust or estate, the disclaimer must be delivered as provided in subsection (3), (4), or (5), as if the power disclaimed were an interest in property.

(12) In the case of a disclaimer of a power by an agent, the disclaimer must be delivered to the principal or the principal's representative.

NEW SECTION. Section 51. When disclaimer barred or limited. (1) A disclaimer is barred by a written waiver of the right to disclaim.

(2) A disclaimer of an interest in property is barred if any of the following events occur before the disclaimer becomes effective:

(a) the disclaimant accepts the interest sought to be disclaimed;

(b) the disclaimant voluntarily assigns, conveys, encumbers, pledges, or transfers the interest sought to be disclaimed or contracts to do so; or

(c) a judicial sale of the interest sought to be disclaimed occurs.

(3) A disclaimer, in whole or part, of the future exercise of a power held in a fiduciary capacity is not barred by its previous exercise.

(4) A disclaimer, in whole or part, of the future exercise of a power not held in a fiduciary capacity is not barred by its previous exercise unless the power is exercisable in favor of the disclaimant.

(5) A disclaimer is barred or limited if so provided by law other than [sections ~~47 through 63~~ 40 THROUGH 56 ~~39 THROUGH 55~~].

(6) A disclaimer of a power over property which is barred by this section is ineffective. A disclaimer of an interest in property which is barred by this section takes effect as a transfer of the interest disclaimed to the persons who would have taken the interest under [sections ~~47 through 63~~ 40 THROUGH 56 ~~39 THROUGH 55~~] had the disclaimer not been barred.

NEW SECTION. Section 52. Tax qualified disclaimer. Notwithstanding any other provision of [sections

~~47 through 63 40 THROUGH 56 39 THROUGH 55]~~, if as a result of a disclaimer or transfer the disclaimed or transferred interest is treated pursuant to the provisions of Title 26 of the United States Code, as now or hereafter amended, or any successor statute thereto, and the regulations promulgated thereunder, as never having been transferred to the disclaimant, then the disclaimer or transfer is effective as a disclaimer under [sections ~~47 through 63 40 THROUGH 56 39 THROUGH 55]~~.

NEW SECTION. Section 53. Recording of disclaimer. If an instrument transferring an interest in or power over property subject to a disclaimer is required or permitted by law to be filed, recorded, or registered, the disclaimer may be so filed, recorded, or registered. Except as otherwise provided in [section ~~58(7)(b) 51(7)(b) 50(7)(B)]~~, failure to file, record, or register the disclaimer does not affect its validity as between the disclaimant and persons to whom the property interest or power passes by reason of the disclaimer.

NEW SECTION. Section 54. Application to existing relationships. Except as otherwise provided in [section ~~59 52 51~~], an interest in or power over property existing on [the effective date of this act] as to which the time for delivering or filing a disclaimer under law superseded by [sections ~~47 through 63 40 THROUGH 56 39 THROUGH 55~~] has not expired may be disclaimed after [the effective date of this act].

NEW SECTION. Section 55. Relation to electronic signatures in global and national commerce act. [Sections ~~47 through 63 40 THROUGH 56 39 THROUGH 55~~] modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001, et seq.) but does not modify, limit, or supersede section 101(c) of that act (15 U.S.C. 7001(c)) or authorize electronic delivery of any of the notices described in section 103(b) of that act (15 U.S.C. 7003(b)).

Section 56. Section 72-3-102, MCA, is amended to read:

"72-3-102. Necessity of order of probate of will. Except as provided in 72-3-1101, to be effective to prove the transfer of any property or to nominate an executor, a will must be declared to be valid by an order of informal probate by the clerk or an adjudication of probate by the court."

~~**NEW SECTION. Section 65. Proceedings affecting devolution and administration -- jurisdiction of subject matter.** The court may hear and determine formal proceedings involving administration and~~

~~distribution of decedents' estates after notice to interested persons in conformity with 72-1-301. Persons notified are bound though less than all interested persons may have been given notice.~~

Section 57. Section 72-3-112, MCA, is amended to read:

"72-3-112. Venue for estate proceedings. (1) Venue for the first informal or formal testacy or appointment proceedings after a decedent's death is:

(a) in the county where the decedent had the decedent's domicile at the time of death; or

(b) if the decedent was not domiciled in this state, in any county where property of the decedent was located at the time of death.

(2) Venue for all subsequent proceedings within the exclusive jurisdiction of the court is in the place where the initial proceeding occurred unless the initial proceeding has been transferred as provided in 72-1-203 or subsection (3) of this section.

(3) If the first proceeding was informal, on application of an interested person and after notice to the proponent in the first proceeding, the court, upon finding that venue is elsewhere, may transfer the proceeding and the file to the other court.

(4) For the purpose of aiding determinations concerning location of assets which may be relevant in cases involving non-domiciliaries, a debt, other than one evidenced by investment or commercial paper or other instrument in favor of a non-domiciliary is located where the debtor resides or, if the debtor is a person other than an individual, at the place where it has its principal office. Commercial paper, investment paper, and other instruments are located where the instrument is. An interest in property held in trust is located where the trustee may be sued."

Section 58. Section 72-3-122, MCA, is amended to read:

"72-3-122. Time limit on probate, testacy, and appointment proceedings -- exceptions. (1) No informal probate or appointment proceeding or formal testacy or appointment proceeding, other than a proceeding to probate a will previously probated at the testator's domicile and appointment proceedings relating to an estate in which there has been a prior appointment, may be commenced more than 3 years after the decedent's death, except:

(a) if a previous proceeding was dismissed because of doubt about the fact of the decedent's death, appropriate probate, appointment, or testacy proceedings may be maintained at any time thereafter upon a

1 finding that the decedent's death occurred prior to the initiation of the previous proceeding and the applicant or
2 petitioner has not delayed unduly in initiating the subsequent proceeding;

3 (b) appropriate probate, appointment, or testacy proceedings may be maintained in relation to the estate
4 of an absent, disappeared, or missing person for whose estate a conservator has been appointed at any time
5 within 3 years after the conservator becomes able to establish the death of the protected person;

6 (c) a proceeding to contest an informally probated will and to secure appointment of the person with legal
7 priority for appointment in the event the contest is successful may be commenced within the later of 12 months
8 from the informal probate or 3 years from the decedent's death;

9 (d) an informal appointment or a formal testacy or appointment proceeding may be commenced ~~after~~
10 ~~the time period thereafter~~, if no proceedings concerning the succession or estate administration have occurred
11 within the 3-year period after the decedent's death, but the personal representative has no right to possess estate
12 assets provided in 72-3-606 beyond that necessary to confirm title to the property in the successors to the estate,
13 and claims other than expenses of administration may not be presented against the estate; and

14 (e) a formal testacy proceeding may be commenced at any time after 3 years from the decedent's death
15 for the purpose of establishing an instrument to direct or control the ownership of property passing or distributable
16 after the decedent's death from one other than the decedent when the property is to be appointed by the terms
17 of the decedent's will or is to pass or be distributed as a part of the decedent's estate or its transfer is otherwise
18 to be controlled by the terms of the decedent's will.

19 (2) These limitations do not apply to proceedings to construe probated wills or determine heirs of an
20 intestate.

21 (3) In cases under subsection (1)(a) or (1)(b), the date on which a testacy or appointment proceeding
22 is properly commenced shall be deemed to be the date of the decedent's death for purposes of other limitations
23 provisions of this code which relate to the date of death."
24

25 **Section 59.** Section 72-3-131, MCA, is amended to read:

26 **"72-3-131. ~~Compromise of controversies~~ Effect of approval of agreements involving trusts,**
27 **inalienable interests, or interests of third persons.** (1) A compromise of any controversy as to admission to
28 probate of any instrument offered for formal probate as the will of a decedent, the construction, validity, or effect
29 of any governing instrument, the rights or interests in the estate of the decedent, of any successor, or the
30 administration of the estate, if approved in a formal proceeding in the court for that purpose, is binding on all the

1 parties to the proceeding, including those unborn, unascertained, or who could not be located.

2 (2) An approved compromise is binding even though it may affect a trust or an inalienable interest. A
3 compromise does not impair the rights of creditors or of taxing authorities who are not parties to it."

4
5 **Section 60.** Section 72-3-201, MCA, is amended to read:

6 **"72-3-201. Applications to be verified.** Applications for informal probate or informal appointment must
7 be directed to the clerk and verified by the applicant to be accurate and complete to the best of the applicant's
8 knowledge and belief as to the information required by 72-3-202 through 72-3-205. By verifying an application
9 for informal probate or informal appointment, the applicant submits personally to the jurisdiction of the court in
10 any proceeding for relief from fraud relating to the application, or for perjury, that may be instituted against the
11 applicant."

12
13 **Section 61.** Section 72-3-202, MCA, is amended to read:

14 **"72-3-202. Required contents of application.** Every application for informal probate of a will or for
15 informal appointment of a personal representative, other than a special, ancillary, or successor representative,
16 must contain the following:

17 (1) a statement of the interest of the applicant;

18 (2) the name and date of death of the decedent, the decedent's age, and the county and state of the
19 decedent's domicile at the time of death and the names and addresses of the spouse, children, heirs, and
20 devisees and the ages of any who are minors so far as known or ascertainable with reasonable diligence by the
21 applicant;

22 (3) if the decedent was not domiciled in the state at the time of death, a statement showing venue;

23 (4) a statement identifying and indicating the address of any personal representative of the decedent
24 appointed in this state or elsewhere whose appointment has not been terminated;

25 (5) a statement indicating whether the applicant has received a demand for notice or is aware of any
26 demand for notice of any probate or appointment proceeding concerning the decedent that may have been filed
27 in this state or elsewhere; and

28 (6) that the time limit for informal probate or appointment as provided in this chapter has not expired either
29 because 3 years or less have passed since the decedent's death, or, if more than 3 years from death have
30 passed, circumstances as described by 72-3-122 have occurred authorizing tardy probate or appointment."

1
2 **Section 62.** Section 72-3-203, MCA, is amended to read:

3 **"72-3-203. Probate and appointment under will -- additional information required.** (1) An application
4 for informal probate of a will must state the following in addition to the statements required by 72-3-202:

5 (a) that the original of the decedent's last will is in the possession of the court or accompanies the
6 application, that an authenticated copy of a will probated in another jurisdiction accompanies the application, or
7 that an authenticated copy of a will filed without probate in another jurisdiction and proved, as provided in
8 72-3-220, accompanies the application;

9 (b) that the applicant to the best of the applicant's knowledge believes the will to have been validly
10 executed;

11 (c) that after the exercise of reasonable diligence, the applicant is unaware of any instrument revoking
12 the will and that the applicant believes that the instrument that is the subject of the application is the decedent's
13 last will;

14 ~~(d) that the time limit for informal probate, as provided in this chapter, has not expired either because~~
15 ~~3 years or less have passed since the decedent's death or, if more than 3 years from death have passed, that~~
16 ~~circumstances as described by 72-3-122 authorizing tardy probate have occurred.~~

17 (2) An application for informal appointment of a personal representative to administer an estate under
18 a will must describe the will by date of execution and state the time and place of probate or the pending
19 application or petition for probate. The application for appointment must adopt the statements in the application
20 or petition for probate and state the name, address, and priority for appointment of the person whose appointment
21 is sought."

22
23 **NEW SECTION.** **Section 63. Formal testacy proceedings -- contested cases.** In a contested case
24 in which the proper execution of a will is at issue, the following rules apply:

25 (1) If the will is self-proved pursuant to 72-2-524, the will satisfies the requirements for execution without
26 the testimony of any attesting witness, upon filing the will and the acknowledgment and affidavits annexed or
27 attached to it, unless there is evidence of fraud or forgery affecting the acknowledgment or affidavit.

28 (2) If the will is witnessed pursuant to 72-2-522(1), but not self-proved, the testimony of at least one of
29 the attesting witnesses is required to establish proper execution if the witness is within this state, competent, and
30 able to testify. Proper execution may be established by other evidence, including an affidavit of an attesting

1 witness. An attestation clause that is signed by the attesting witnesses raises a rebuttable presumption that the
2 events recited in the clause occurred.

3
4 **Section 64.** Section 72-3-401, MCA, is amended to read:

5 **"72-3-401. Supervised administration -- nature and purpose -- presumptive entitlement. (1)**

6 Supervised administration is a single in rem proceeding to secure complete administration and settlement of a
7 decedent's estate under the continuing authority of the court, which extends until entry of an order approving
8 distribution of the estate and discharging the personal representative ~~or other order terminating the proceeding.~~
9 or other order terminating the proceeding. A supervised personal representative is responsible to the court, as
10 well as to the interested parties, and is subject to directions concerning the estate made by the court on its own
11 motion or on the motion of any interested party. Except as otherwise provided in this part, or as otherwise
12 ordered by the court, a supervised personal representative has the same duties and powers as a personal
13 representative who is not supervised.

14 ~~(2) If a probate estate has not been closed within 3 years after the first appointment of a personal~~
15 ~~representative or administrator, any devisee under a will, beneficiary of a trust, or intestate heir of the decedent~~
16 ~~is entitled to petition for supervised administration under this section and is presumptively entitled to receive an~~
17 ~~order for supervised administration. The burden of proof to show cause why supervised administration should~~
18 ~~not be granted is on the personal representative or administrator."~~

19
20 **Section 65.** Section 72-3-404, MCA, is amended to read:

21 **"72-3-404. Powers and duties of personal representative in supervised administration. (1)** ~~A~~

22 ~~supervised personal representative is responsible to the court, as well as to the interested parties, and is subject~~
23 ~~to directions concerning the estate made by the court on its own motion or on the motion of any interested party.~~

24 ~~—— (2) Except as otherwise provided in this part or as otherwise ordered by the court, a supervised personal~~
25 ~~representative has the same duties and powers as a personal representative who is not supervised.~~

26 ~~—— (3) Unless restricted by the court, a supervised personal representative has, without interim orders~~
27 ~~approving exercise of a power, all powers of personal representatives under this code, but the personal~~
28 ~~representative may not exercise the power to make any distribution of the estate without prior order of the court.~~
29 Any other restriction on the power of a personal representative that may be ordered by the court must be
30 endorsed on the personal representative's letters of appointment and unless so endorsed is ineffective as to

persons dealing in good faith with the personal representative."

Section 66. Section 72-3-502, MCA, is amended to read:

"72-3-502. Priorities for appointment. Whether the proceedings are formal or informal, persons who are not disqualified have priority for appointment in the following order:

(1) the person with priority as determined by a probated will, including a person nominated by a power conferred in a will;

(2) the surviving spouse of the decedent who is a devisee of the decedent;

(3) the custodial parent of a minor decedent;

(4) other devisees of the decedent;

(5) the surviving spouse of the decedent;

(6) the parent of an adult decedent who was survived by issue, none of whom is an adult;

~~(6)(7)~~ other heirs of the decedent;

~~(7)(8)~~ public administrator;

~~(8)(9)~~ 45 days after the death of the decedent, any creditor."

Section 67. Section 72-3-504, MCA, is amended to read:

"72-3-504. Renunciation -- nomination of other -- two or more persons sharing priority. (1) A person entitled to letters under 72-3-502(2) through ~~(6)~~ (7) may nominate a qualified person to act as personal representative.

(2) Any person entitled to letters may renounce the person's right to nominate or to an appointment by appropriate writing filed with the court.

(3) When two or more persons share a priority, those of them who do not renounce shall concur in nominating another to act for them or in applying for appointment. If they are unable to concur in nominating another to act for them or in applying for appointment, the court may appoint any qualified person."

Section 68. Section 72-3-514, MCA, is amended to read:

"72-3-514. Demand for bond by interested person. (1) Any person apparently having an interest in the estate worth in excess of ~~\$1,000~~ \$5,000 or any creditor having a claim in excess of ~~\$1,000~~ \$5,000 may make a written demand that a personal representative give bond. The demand must be filed with the clerk and a copy

1 mailed to the personal representative, if appointment and qualification have occurred. Upon filing of the demand,
2 bond is required, but the requirement ceases if the person demanding bond ceases to be interested in the estate
3 or if bond is excused as provided in 72-3-513 or 72-3-515.

4 (2) After the personal representative has received notice and until the filing of the bond or cessation of
5 the requirement of bond, the personal representative shall refrain from exercising any powers of the personal
6 representative's office except as necessary to preserve the estate.

7 (3) Failure of the personal representative to meet a requirement of bond by giving suitable bond within
8 30 days after receipt of notice is cause for removal and appointment of a successor personal representative."
9

10 **Section 69.** Section 72-3-607, MCA, is amended to read:

11 **"72-3-607. Inventory -- appraisal.** (1) Within 9 months after appointment, a personal representative who
12 is not a special administrator or a successor to another representative who has previously discharged this duty
13 shall prepare an inventory of property owned by the decedent at the time of the decedent's death, listing the
14 inventory of property with reasonable detail and indicating for each listed item its fair market value as of the date
15 of the decedent's death and the type and amount of any encumbrance that may exist with reference to the item.

16 (2) The inventory must include a statement of the ~~full and true~~ fair market value of the decedent's interest
17 in every item listed in the inventory. The personal representative may ~~appoint one or more~~ employ a qualified and
18 disinterested ~~persons appraiser~~ appraiser to assist the personal representative in ascertaining the fair market value as of
19 the date of the decedent's death of ~~all assets included in the estate~~ any asset the value of which may be subject
20 to reasonable doubt. Different persons may be employed to appraise different kinds of assets included in the
21 estate. The names and addresses of any ~~appraisers~~ appraiser must be indicated on the inventory with the item
22 or items appraised.

23 (3) The personal representative shall:

24 (a) send a copy of the inventory to ~~interested persons~~ the following who request it: heirs, devisees, and
25 creditors with allowed claims that have not been satisfied; or

26 (b) file the original of the inventory with the court and send a copy of the inventory to interested persons
27 who request it."
28

29 **Section 70.** Section 72-3-611, MCA, is amended to read:

30 **"72-3-611. No surcharge for authorized acts generally -- limitation.** (1) A personal representative

1 may not be surcharged for acts of administration or distribution if the conduct in question was authorized at the
2 time. Subject to other obligations of administration and of this code, an informally probated will is authority to
3 administer and distribute the estate according to its terms. Subject to the provisions of this code, an order of
4 appointment of a personal representative, whether issued in informal or formal proceedings, is authority to
5 distribute apparently intestate assets to the heirs of the decedent if, at the time of distribution, the personal
6 representative is not aware of a pending testacy proceeding, a proceeding to vacate an order entered in an earlier
7 testacy proceeding, a formal proceeding questioning the personal representative's appointment or fitness to
8 continue, or a supervised administration proceeding.

9 (2) This section does not affect the duty of the personal representative to administer and distribute the
10 estate in accordance with the rights of claimants whose claims have been allowed, the surviving spouse, any
11 minor and dependent children, and any pretermitted child of the decedent as described elsewhere in this code."

12
13 **Section 71.** Section 72-3-613, MCA, is amended to read:

14 **"72-3-613. Transactions authorized for personal representative.** Except as restricted by this code
15 or otherwise provided by the will or by an order in a formal proceeding and subject to the priorities stated in
16 72-3-901, a personal representative, acting reasonably for the benefit of the interested persons, may properly:

17 (1) retain assets owned by the decedent pending distribution or liquidation, including those in which the
18 representative is personally interested or which are otherwise improper for trust investment;

19 (2) receive assets from fiduciaries or other sources;

20 (3) perform, compromise, or refuse performance of the decedent's contracts that continue as obligations
21 of the estate, as the personal representative may determine under the circumstances. In performing enforceable
22 contracts by the decedent to convey or lease land, the personal representative, among other possible courses
23 of action, may:

24 (a) execute and deliver a deed of conveyance for cash payment of all sums remaining due or the
25 purchaser's note for the sum remaining due secured by a mortgage or deed of trust on the land; or

26 (b) deliver a deed in escrow with directions that the proceeds, when paid in accordance with the escrow
27 agreement, be paid to the successors of the decedent, as designated in the escrow agreement;

28 (4) satisfy written charitable pledges of the decedent irrespective of whether the pledges constituted
29 binding obligations of the decedent or were properly presented as claims, if in the judgment of the personal
30 representative the decedent would have wanted the pledges completed under the circumstances;

(5) if funds are not needed to meet debts and expenses currently payable and are not immediately distributable, deposit or invest liquid assets of the estate, including money received from the sale of other assets, in federally insured interest-bearing accounts, readily marketable secured loan arrangements, or other prudent investments that would be reasonable for use by trustees generally. If the personal representative is authorized to invest funds in United States obligations, the personal representative may invest in these obligations either directly or in the form of securities of or other interests in an open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 through 80a-64), as amended, if:

(a) the portfolio of the investment company or investment trust is limited to United States government obligations and repurchase agreements fully collateralized by United States government obligations; and

(b) the investment company or investment trust takes delivery of the collateral for any repurchase agreement, either directly or through an authorized custodian.

(6) acquire or dispose of an asset, including land in this or another state, for cash or on credit, at public or private sale and manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;

(7) make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, raze existing or erect new party walls or buildings;

(8) subdivide, develop, or dedicate land to public use; make or obtain the vacation of plats and adjust boundaries; adjust differences in valuation on exchange or partition by giving or receiving considerations; or dedicate easements to public use without consideration;

(9) enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, for a term within or extending beyond the period of administration;

(10) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(11) ~~with the consent of the heirs or devisees or the court,~~ abandon property when in the opinion of the personal representative it is valueless or is so encumbered or is in condition that it is of no benefit to the estate;

(12) vote stocks or other securities in person or by general or limited proxy;

(13) pay calls, assessments, and other sums chargeable or accruing against or on account of securities, unless barred by the provisions relating to claims;

(14) hold a security in the name of a nominee or in other form without disclosure of the interest of the

1 estate, but the personal representative is liable for any act of the nominee in connection with the security so held;

2 (15) insure the assets of the estate against damage, loss, and liability and the personal representative
3 against liability as to third persons;

4 (16) borrow money with or without security to be repaid from the estate assets or otherwise and advance
5 money for the protection of the estate;

6 (17) ~~with the consent of the heirs or devisees or the court,~~ effect a fair and reasonable compromise with
7 any debtor or obligor or extend, renew, or in any manner modify the terms of any obligation owing to the estate.

8 If the personal representative holds a mortgage, pledge, or other lien upon property of another person, the
9 personal representative may, in lieu of foreclosure, accept a conveyance or transfer of encumbered assets from
10 the owner thereof in satisfaction of the indebtedness secured by lien.

11 (18) pay taxes, assessments, compensation of the personal representative, and other expenses incident
12 to the administration of the estate;

13 (19) sell or exercise stock subscription or conversion rights; consent, directly or through a committee or
14 other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other
15 business enterprise;

16 (20) allocate items of income or expense to either estate income or principal, as permitted or provided
17 by law;

18 (21) employ persons, including attorneys, auditors, investment advisors, or agents, even if they are
19 associated with the personal representative, to advise or assist the personal representative in the performance
20 of the personal representative's administrative duties; act without independent investigation upon their
21 recommendations; and, instead of acting personally, employ one or more agents to perform any act of
22 administration, whether or not discretionary;

23 (22) prosecute or defend claims or proceedings in any jurisdiction for the protection of the estate and of
24 the personal representative in the performance of the personal representative's duties;

25 (23) sell, mortgage, or lease any real or personal property of the estate or any interest therein for cash,
26 credit, or for part cash and part credit and with or without security for unpaid balances; ~~provided, however, a~~
27 ~~personal representative may not, without prior court approval in a supervised proceeding, either directly or~~
28 ~~indirectly purchase any property of the estate that the personal representative represents, nor be interested in~~
29 ~~the sale. All sales must be fairly conducted and made for the best price obtainable.~~

30 (24) continue any unincorporated business or venture in which the decedent was engaged at the time

1 of death in the same business form, including a sole proprietorship, partnership, or limited liability company,
2 unless otherwise ordered by the court in a formal proceeding initiated by an interested person on the basis that
3 continuation of the business is not in the best interests of the estate or its beneficiaries;

4 (25) incorporate any business or venture in which the decedent was engaged at the time of death;

5 (26) satisfy and settle claims and distribute the estate as provided in this code."
6

7 **NEW SECTION. Section 72. Powers of personal representatives in general.** (1) Until termination
8 of his appointment a personal representative has the same power over the title to property of the estate that an
9 absolute owner would have, in trust however, for the benefit of the creditors and others interested in the estate.
10 This power may be exercised without notice, hearing, or order of court.

11 (2) A personal representative has access to and authority over a digital asset of the decedent to the
12 extent provided by the Revised Uniform Fiduciary Access to Digital Assets Act or by order of court.
13

14 **Section 73.** Section 72-3-618, MCA, is amended to read:

15 **"72-3-618. Persons dealing with personal representative -- protection.** (1) A person who in good
16 faith and without notice either assists a personal representative or deals with a personal representative for value
17 is protected as if the personal representative properly exercised the personal representative's power. The fact
18 that a person knowingly deals with a personal representative does not alone require the person to inquire into
19 the existence of a power or the propriety of its exercise. Except for restrictions on powers of supervised personal
20 representatives that are endorsed on letters as provided in ~~72-3-404(3)~~ 72-3-404, a provision in any will or order
21 of court purporting to limit the power of a personal representative is not effective except as to persons with actual
22 knowledge of the provision.

23 (2) A person is not bound to see to the proper application of estate assets paid or delivered to a personal
24 representative.

25 (3) The protection expressed in this section extends to instances in which some procedural irregularity
26 or jurisdictional defect occurred in proceedings leading to the issuance of letters, including a case in which the
27 alleged decedent is found to be alive. The protection expressed in this section is not a substitution for that
28 provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers
29 of securities by fiduciaries."
30

1 **Section 74.** Section 72-3-631, MCA, is amended to read:

2 **"72-3-631. Compensation of personal representative.** (1) A personal representative is entitled to
3 reasonable compensation for services. ~~The compensation may not exceed 3% of the first \$40,000 of the value~~
4 ~~of the estate as reported for federal estate tax purposes and 2% of the value of the estate in excess of \$40,000~~
5 ~~as reported for federal estate tax purposes. However, a personal representative is entitled to a minimum~~
6 ~~compensation of the lesser of \$100 or the value of the gross estate.~~

7 ~~——— (2) In proceedings conducted for the termination of joint tenancies, the compensation of the personal~~
8 ~~representative may not exceed 2% of the interest passing.~~

9 ~~——— (3) In proceedings conducted for the termination of a life estate, the compensation allowed the personal~~
10 ~~representative may not exceed 2% of the value of the life estate if it is terminated in connection with a probate~~
11 ~~or joint tenancy termination. If a life estate is terminated separately, the personal representative's compensation~~
12 ~~may not exceed 2% of the value of the estate, except that it may not be less than \$100.~~

13 ~~——— (4) If there is more than one personal representative, only one compensation is allowed.~~

14 ~~——— (5) The court may allow additional compensation for extraordinary services. The additional compensation~~
15 ~~may not be greater than the amount that is allowed for the original compensation.~~

16 (6)(2) If the will provides for the compensation of the personal representative and there is no contract
17 with the decedent regarding compensation, the personal representative may renounce the provision before
18 qualifying and be entitled to compensation under the terms of this section. A personal representative also may
19 renounce the right to all or any part of the compensation. A written renunciation of fee may be filed with the court."

21 **Section 75.** Section 72-3-803, MCA, is amended to read:

22 **"72-3-803. Nonclaim -- limitations on presentation of claims -- exceptions.** (1) All claims against a
23 decedent's estate that arose before the death of the decedent, including claims of the state and any subdivision
24 of the state, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on
25 contract, tort, or other legal basis, if not barred earlier by other statute of limitations, are barred against the estate,
26 the personal representative, and the heirs and devisees and nonprobate transferees of the decedent unless
27 presented within the earlier of the following time limitations:

28 (a) within 1 year after the decedent's death; or

29 (b) within the time provided by 72-3-801(2) for creditors who are given actual notice and within the time
30 provided in 72-3-801(1) for all creditors barred by publication.

~~(2) However, claims~~ A claim described in subsection (1) which is barred by the nonclaim statute at the decedent's domicile before the giving of notice to creditors in this state ~~are also~~ is barred in this state.

~~(2)(3)~~ All claims against a decedent's estate that arise at or after the death of the decedent, including claims of the state and any subdivision of the state, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, are barred against the estate, the personal representative, and the heirs and devisees of the decedent unless presented as follows:

(a) a claim based on a contract with the personal representative, within 4 months after performance by the personal representative is due;

(b) any other claim, within the later of 4 months after it arises or the time specified in subsection (1)(a).

~~(3)(4)~~ This section does not affect or prevent:

(a) any proceeding to enforce any mortgage, pledge, or other lien upon property of the estate;

(b) to the limits of the insurance protection only, any proceeding to establish liability of the decedent or the personal representative for which the decedent or the personal representative is protected by liability insurance; or

(c) collection of compensation for services rendered and reimbursement for expenses advanced by the personal representative or by the attorney or accountant for the personal representative of the estate."

Section 76. Section 72-3-815, MCA, is amended to read:

"72-3-815. Compromise of claims. When a claim against the estate has been presented in any manner, the personal representative ~~with the consent of the heirs or devisees or the court~~ may, if it appears for the best interest of the estate, compromise the claim, whether due or not due, absolute or contingent, liquidated or unliquidated."

Section 77. Section 72-3-917, MCA, is amended to read:

"72-3-917. Distribution to person under disability. (1) A personal representative may discharge the personal representative's obligation to distribute to any person under legal disability by distributing in a manner expressly provided in the will.

(2) Unless contrary to an express provision in the will, the personal representative may discharge the personal representative's obligation to distribute to a minor or person under other disability as authorized by 72-5-104 or any other statute. If the personal representative knows that a conservator has been appointed or that

1 a proceeding for appointment of a conservator is pending, the personal representative is authorized to distribute
2 only to the conservator.

3 (3) (a) If the heir or devisee is under disability other than minority, the personal representative is
4 authorized to distribute to:

5 (i) an attorney-in-fact who has authority under a power of attorney to receive property for that person;
6 or

7 (ii) the spouse, parent, or other close relative with whom the person under disability resides if the
8 distribution is of amounts not exceeding \$10,000 a year or property not exceeding ~~\$10,000~~ \$50,000 in value,
9 unless the court authorizes a larger amount or greater value.

10 (b) Any person receiving money or property for the disabled person is obligated to apply the money or
11 property to the support of the disabled person, but the receiving person may not accept any pay except by way
12 of reimbursement for out-of-pocket expenses for goods and services necessary for the support of the disabled
13 person. Excess sums must be preserved for future support of the disabled person. The personal representative
14 is not responsible for the proper application of money or property distributed pursuant to this subsection (3)."
15

16 **Section 78.** Section 72-3-1012, MCA, is amended to read:

17 **"72-3-1012. Liability of distributees to claimants.** (1) After assets of an estate have been distributed
18 and subject to 72-3-1013, an undischarged claim that is not barred may be prosecuted in a proceeding against
19 one or more distributees. ~~A distributee is not liable to claimants~~ No distributee shall be liable to claimants for
20 amounts received as exempt property, homestead or family allowances, or for amounts in excess of the value
21 of the distributee's distribution as of the time of distribution or for amounts in excess of the value of the
22 distributee's distribution as of the time of distribution.

23 (2) As between distributees, each shall bear the cost of satisfaction of unbarred claims as if the claim
24 had been satisfied in the course of administration. Any distributee who fails to notify other distributees of the
25 demand made upon the distributee by the claimant in sufficient time to permit them to join in any proceeding in
26 which the claim was asserted against the distributee loses the right of contribution against other distributees."
27

28 **Section 79.** Section 72-3-1013, MCA, is amended to read:

29 **"72-3-1013. Limitation on actions against distributees.** (1) Unless previously adjudicated in a formal
30 testacy proceeding or in a proceeding settling the accounts of a personal representative or otherwise barred, the

claim of any claimant to recover from a distributee who is liable to pay the claim and the right of any heir or devisee or of a successor personal representative acting in their behalf to recover property improperly distributed or the value thereof from any distributee is forever barred at the later of 3 years after the decedent's death or 1 year after the time of distribution ~~thereof~~, but all claims of creditors of the decedent are barred 1 year after the decedent's death.

(2) This section does not bar an action to recover property or value received as the result of fraud."

Section 80. Section 72-4-203, MCA, is amended to read:

"72-4-203. Service on foreign personal representative. (1) Service of process may be made upon the foreign personal representative by registered or certified mail addressed to the foreign personal representative's last reasonably ascertainable address requesting a return receipt signed by addressee only. Notice by ordinary first-class mail is sufficient if registered or certified mail service to the addressee is unavailable. Service may be made upon a foreign personal representative in the manner in which service could have been made under other laws of this state on either the foreign personal representative or the foreign personal representative's decedent immediately prior to death.

(2) If service is made upon a foreign personal representative as provided in subsection (1), the foreign personal representative must be allowed at least 30 days within which to appear or respond."

Section 81. Section 72-6-111, MCA, is amended to read:

"72-6-111. Nonprobate transfers on death. (1) A provision for a nonprobate transfer on death in an insurance policy, contract of employment, bond, mortgage, promissory note, certificated or uncertificated security, account agreement, custodial agreement, deposit agreement, compensation plan, pension plan, individual retirement plan, employee benefit plan, trust, conveyance, deed of gift, ~~beneficiary~~ transfer on death deed, as defined in ~~72-6-124~~ [section 94-86-84], marital property agreement, or other written instrument of a similar nature is nontestamentary. This subsection includes a written provision that:

(a) money or other benefits due to, controlled by, or owned by a decedent before death must be paid after the decedent's death to a person whom the decedent designates either in the instrument or in a separate writing, including a will, executed either before or at the same time as the instrument or later;

(b) money due or to become due under the instrument ceases to be payable in the event of death of the promisee or the promisor before payment or demand; or

(c) any property controlled by or owned by the decedent before death that is the subject of the instrument passes to a person the decedent designates either in the instrument or in a separate writing, including a will, executed either before or at the same time as the instrument or later.

(2) This section does not limit rights of creditors under other laws of this state."

NEW SECTION. Section 82. Liability of nonprobate transferees for creditor claims and statutory allowances. (1) In this section, "nonprobate transfer" means a valid transfer effective at death, other than a transfer of a survivorship interest in a joint tenancy of real estate, by a transferor whose last domicile was in this state to the extent that the transferor immediately before death had power, acting alone, to prevent the transfer by revocation or withdrawal and instead to use the property for the benefit of the transferor or apply it to discharge claims against the transferor's probate estate.

(2) Except as otherwise provided by statute, a transferee of a nonprobate transfer is subject to liability to any probate estate of the decedent for allowed claims against decedent's probate estate and statutory allowances to the decedent's spouse and children to the extent the estate is insufficient to satisfy those claims and allowances. The liability of a nonprobate transferee may not exceed the value of nonprobate transfers received or controlled by that transferee.

(3) Nonprobate transferees are liable for the insufficiency described in subsection (2) in the following order of priority:

(a) a transferee designated in the decedent's will or any other governing instrument, as provided in the instrument;

(b) the trustee of a trust serving as the principal nonprobate instrument in the decedent's estate plan as shown by its designation as devisee of the decedent's residuary estate or by other facts or circumstances, to the extent of the value of the nonprobate transfer received or controlled;

(c) other nonprobate transferees, in proportion to the values received.

(4) Unless otherwise provided by the trust instrument, interests of beneficiaries in all trusts incurring liabilities under this section abate as necessary to satisfy the liability, as if all of the trust instruments were a single will and the interests were devised under it.

(5) A provision made in one instrument may direct the apportionment of the liability among the nonprobate transferees taking under that or any other governing instrument. If a provision in one instrument conflicts with a provision in another, the later one prevails.

(6) Upon due notice to a nonprobate transferee, the liability imposed by this section is enforceable in proceedings in this state, whether or not the transferee is located in this state.

(7) A proceeding under this section may not be commenced unless the personal representative of the decedent's estate has received a written demand for the proceeding from the surviving spouse or a child, to the extent that statutory allowances are affected, or a creditor. If the personal representative declines or fails to commence a proceeding after demand, a person making demand may commence the proceeding in the name of the decedent's estate, at the expense of the person making the demand and not of the estate. A personal representative who declines in good faith to commence a requested proceeding incurs no personal liability for declining.

(8) A proceeding under this section must be commenced within 1 year after the decedent's death, but a proceeding on behalf of a creditor whose claim was allowed after proceedings challenging disallowance of the claim may be commenced within 60 days after final allowance of the claim.

(9) Unless a written notice asserting that a decedent's probate estate is nonexistent or insufficient to pay allowed claims and statutory allowances has been received from the decedent's personal representative, the following rules apply:

(a) Payment or delivery of assets by a financial institution, registrar, or other obligor, to a nonprobate transferee in accordance with the terms of the governing instrument controlling the transfer releases the obligor from all claims for amounts paid or assets delivered.

(b) A trustee receiving or controlling a nonprobate transfer is released from liability under this section with respect to any assets distributed to the trust's beneficiaries. Each beneficiary to the extent of the distribution received becomes liable for the amount of the trustee's liability attributable to assets received by the beneficiary.

~~Section 84. Section 72-6-213, MCA, is amended to read:~~

~~"72-6-213. Alteration of rights. (1) Rights at death under 72-6-212 are determined by the terms of the account at the death of a party.~~

~~(2) Except as provided in subsection (3) and unless otherwise agreed in writing between the parties to the account, the terms of an account may be altered by written notice given by a party to the financial institution to change the terms of account or to stop or vary payment under the terms of the account. The notice must be signed by a party and received by the financial institution during the party's lifetime.~~

~~(3) A financial institution may, in its discretion, refuse to honor a request for alteration of rights that would~~

1 change:

2 ——— (a) the financial institution's obligations or rights under the contract of deposit; or

3 ——— (b) the parties to a multiple-party account if the request is not signed by all of the parties to the account,
4 ~~unless all the parties executed a Multiple-Party Account Form under 72-6-204 that expressly indicates that~~
5 ~~account terms may be changed by a single party.~~

6 ——— (4) A right of survivorship arising from the express terms of the account, from 72-6-212, or from a POD
7 designation may not be altered by will."

8
9 NEW SECTION. Section 83. Short title. [Sections ~~93 through 110~~ 85 THROUGH 102 ~~83 THROUGH 100~~]
10 may be cited as the "Uniform Real Property Transfer on Death Act".

11
12 NEW SECTION. Section 84. Definitions. As used in [sections ~~93 through 110~~ 85 THROUGH 102 ~~83~~
13 ~~THROUGH 100~~], the following definitions apply:

14 (1) "Beneficiary" means a person that receives property under a transfer on death deed.

15 (2) "Designated beneficiary" means a person designated to receive property in a transfer on death deed.

16 (3) "Joint owner" means an individual who owns property concurrently with one or more other individuals
17 with a right of survivorship. The term includes a joint tenant. The term does not include a tenant in common.

18 (4) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability
19 company, association, joint venture, public corporation, government or governmental subdivision, agency, or
20 instrumentality, or any other legal or commercial entity.

21 (5) "Property" means an interest in real property located in this state which is transferable on the death
22 of the owner.

23 (6) "Transfer on death deed" means a deed authorized under this part.

24 (7) "Transferor" means an individual who makes a transfer on death deed.

25
26 NEW SECTION. Section 85. Applicability. [Sections ~~93 through 110~~ 85 THROUGH 102 ~~83 THROUGH 100~~]
27 applies to a transfer on death deed made before, on, or after [the effective date of this act] by a transferor dying
28 on or after [the effective date of this act].

29
30 NEW SECTION. Section 86. Nonexclusivity. [Section ~~93 through 110~~ 85 THROUGH 102 ~~83 THROUGH~~

1 100] does not affect any method of transferring property otherwise permitted under the law of this state.

2
3 NEW SECTION. Section 87. Transfer on death deed authorized. An individual may transfer property
4 to one or more beneficiaries effective at the transferor's death by a transfer on death deed.

5
6 NEW SECTION. Section 88. Transfer on death deed revocable. A transfer on death deed is
7 revocable even if the deed or another instrument contains a contrary provision.

8
9 NEW SECTION. Section 89. Transfer on death deed nontestamentary. A transfer on death deed
10 is nontestamentary.

11
12 NEW SECTION. Section 90. Capacity of transferor. The capacity required to make or revoke a
13 transfer on death deed is the same as the capacity required to make a will.

14
15 NEW SECTION. Section 91. Requirements. A transfer on death deed:
16 (1) except as otherwise provided in subsection (2), must contain the essential elements and formalities
17 of a properly recordable inter vivos deed;
18 (2) must state that the transfer to the designated beneficiary is to occur at the transferor's death; and
19 (3) must be recorded before the transferor's death in the public records in the office of the county clerk
20 and recorder of the county where the property is located.

21
22 NEW SECTION. Section 92. Notice, delivery, acceptance, consideration not required. A transfer
23 on death deed is effective without:

- 24 (1) notice or delivery to or acceptance by the designated beneficiary during the transferor's life; or
25 (2) consideration.

26
27 NEW SECTION. Section 93. Revocation by instrument authorized -- revocation by act not
28 permitted. (1) Subject to subsection (2), an instrument is effective to revoke a recorded transfer on death deed,
29 or any part of it, only if the instrument:

- 30 (a) is one of the following:

(i) a transfer on death deed that revokes the deed or part of the deed expressly or by inconsistency;
(ii) an instrument of revocation that expressly revokes the deed or part of the deed;
(iii) an inter vivos deed that expressly revokes the transfer on death deed or part of the deed; and
(b) is acknowledged by the transferor after the acknowledgment of the deed being revoked and recorded before the transferor's death in the public records in the office of the county clerk and recorder of the county where the deed is recorded.

(2) If a transfer on death deed is made by more than one transferor:

(a) revocation by a transferor does not affect the deed as to the interest of another transferor; and

(b) a deed of joint owners is revoked only if it is revoked by all of the living joint owners.

(3) After a transfer on death deed is recorded, it may not be revoked by a revocatory act on the deed.

(4) This section does not limit the effect of an inter vivos transfer of the property, which revokes any prior transfer on death deed to the property.

NEW SECTION. Section 94. Effect of transfer on death deed during transferor's life. During a transferor's life, a transfer on death deed does not:

(1) affect an interest or right of the transferor or any other owner, including the right to transfer or encumber the property;

(2) affect an interest or right of a transferee, even if the transferee has actual or constructive notice of the deed;

(3) affect an interest or right of a secured or unsecured creditor or future creditor of the transferor, even if the creditor has actual or constructive notice of the deed;

(4) affect the transferor's or designated beneficiary's eligibility for any form of public assistance;

(5) create a legal or equitable interest in favor of the designated beneficiary; or

(6) subject the property to claims or process of a creditor of the designated beneficiary.

NEW SECTION. Section 95. Effect of transfer on death deed at transferor's death. (1) Except as otherwise provided in the transfer on death deed, in [section 94 ~~83~~ 82], or in this section, and subject to chapter 2, part 2, of this title, on the death of the transferor, the following rules apply to property that is the subject of a transfer on death deed and owned by the transferor at death:

(a) Subject to subsection (1)(b), the interest in the property is transferred to the designated beneficiary

1 in accordance with the deed.

2 (b) The interest of a designated beneficiary is contingent on the designated beneficiary surviving the
3 transferor. The interest of a designated beneficiary that fails to survive the transferor lapses.

4 (c) Subject to subsection (1)(d), concurrent interests are transferred to the beneficiaries in equal and
5 undivided shares with no right of survivorship.

6 (d) If the transferor has identified two or more designated beneficiaries to receive concurrent interests
7 in the property, the share of one which lapses or fails for any reason is transferred to the other, or to the others
8 in proportion to the interest of each in the remaining part of the property held concurrently.

9 (2) Subject to Title 70, chapter 21, a beneficiary takes the property subject to all conveyances,
10 encumbrances, assignments, contracts, mortgages, liens, and other interests to which the property is subject at
11 the transferor's death. For purposes of this subsection and Title 70, chapter 21, the recording of the transfer on
12 death deed is deemed to have occurred at the transferor's death.

13 (3) If a transferor is a joint owner and is:

14 (a) survived by one or more other joint owners, the property that is the subject of a transfer on death deed
15 belongs to the surviving joint owner or owners with right of survivorship; or

16 (b) the last surviving joint owner, the transfer on death deed is effective.

17 (4) A transfer on death deed transfers property without covenant or warranty of title even if the deed
18 contains a contrary provision.

19
20 **NEW SECTION. Section 96. Disclaimer.** A beneficiary may disclaim all or part of the beneficiary's
21 interest as provided by [sections ~~47 through 63~~ 40 THROUGH 56 ~~39 THROUGH 55~~], the Uniform Disclaimer of
22 Property Interests Act.

23
24 **NEW SECTION. Section 97. Liability for creditor claims and statutory allowances.** A beneficiary
25 of a transfer on death deed is liable for an allowed claim against the transferor's probate estate and statutory
26 allowances to a surviving spouse and children to the extent provided in [section ~~91~~ 83 ~~82~~].

27
28 **NEW SECTION. Section 98. Optional form of transfer on death deed.** The following form may be
29 used to create a transfer on death deed. The other sections of [sections ~~93 through 110~~ 85 THROUGH 102 ~~83~~
30 THROUGH 100] govern the effect of this or any other instrument used to create a transfer on death deed:

1 (front of form)

2 REVOCABLE TRANSFER ON DEATH DEED

3 NOTICE TO OWNER

4 You should carefully read all information on the other side of this form. You May Want to Consult a Lawyer
5 Before Using This Form.

6 This form must be recorded before your death, or it will not be effective.

7 IDENTIFYING INFORMATION

8 Owner or Owners Making This Deed:

9 _____
10 Printed name Mailing address

11 _____
12 Printed name Mailing address

13 Legal description of the property:

14 _____
15 _____

16 PRIMARY BENEFICIARY

17 I designate the following beneficiary if the beneficiary survives me.

18 _____
19 Printed name Mailing address, if available

20 ALTERNATE BENEFICIARY - Optional

21 If my primary beneficiary does not survive me, I designate the following alternate beneficiary if that beneficiary
22 survives me.

23 _____
24 Printed name Mailing address, if available

25 TRANSFER ON DEATH

26 At my death, I transfer my interest in the described property to the beneficiaries as designated above.

27 Before my death, I have the right to revoke this deed.

28 SIGNATURE OF OWNER OR OWNERS MAKING THIS DEED

29 _____ [(SEAL)] _____

30 Signature Date

1 _____ [(SEAL)] _____

2 Signature Date

3 ACKNOWLEDGMENT

4 (insert acknowledgment for deed here)

5 (back of form)

6 COMMON QUESTIONS ABOUT THE USE OF THIS FORM

7 What does the Transfer on Death (TOD) deed do? When you die, this deed transfers the described property,
8 subject to any liens or mortgages (or other encumbrances) on the property at your death. Probate is not required.

9 The TOD deed has no effect until you die. You can revoke it at any time. You are also free to transfer the
10 property to someone else during your lifetime. If you do not own any interest in the property when you die, this
11 deed will have no effect.

12 How do I make a TOD deed? Complete this form. Have it acknowledged before a notary public or other individual
13 authorized by law to take acknowledgments. Record the form in each county where any part of the property is
14 located. The form has no effect unless it is acknowledged and recorded before your death.

15 Is the "legal description" of the property necessary? Yes.

16 How do I find the "legal description" of the property? This information may be on the deed you received when you
17 became an owner of the property. This information may also be available in the office of the county clerk and
18 recorder for the county where the property is located. If you are not absolutely sure, consult a lawyer.

19 Can I change my mind before I record the TOD deed? Yes. If you have not yet recorded the deed and want to
20 change your mind, simply tear up or otherwise destroy the deed.

21 How do I "record" the TOD deed? Take the completed and acknowledged form to the office of the county clerk
22 and recorder of the county where the property is located. Follow the instructions given by the county clerk and
23 recorder to make the form part of the official property records. If the property is in more than one county, you
24 should record the deed in each county.

25 Can I later revoke the TOD deed if I change my mind? Yes. You can revoke the TOD deed. No one, including
26 the beneficiaries, can prevent you from revoking the deed.

27 How do I revoke the TOD deed after it is recorded? There are three ways to revoke a recorded TOD deed:

28 (1) Complete and acknowledge a revocation form, and record it in each county where the property is
29 located.

30 (2) Complete and acknowledge a new TOD deed that disposes of the same property, and record it in

1 each county where the property is located.

2 (3) Transfer the property to someone else during your lifetime by a recorded deed that expressly revokes
3 the TOD deed. You may not revoke the TOD deed by will.

4 I am being pressured to complete this form. What should I do? Do not complete this form under pressure. Seek
5 help from a trusted family member, friend, or lawyer.

6 Do I need to tell the beneficiaries about the TOD deed? No, but it is recommended. Secrecy can cause later
7 complications and might make it easier for others to commit fraud.

8 I have other questions about this form. What should I do? This form is designed to fit some but not all situations.

9 If you have other questions, you are encouraged to consult a lawyer.

10

11 NEW SECTION. **Section 99. Optional form of revocation.** The following form may be used to create
12 an instrument of revocation under [sections ~~93 through 110~~ ~~85 THROUGH 102~~ 83 THROUGH 100]. The other
13 sections of [sections ~~93 through 110~~ ~~85 THROUGH 102~~ 83 THROUGH 100] govern the effect of this or any other
14 instrument used to revoke a transfer on death deed.

15 (front of form)

16 REVOCATION OF TRANSFER ON DEATH DEED

17 NOTICE TO OWNER

18 This revocation must be recorded before you die or it will not be effective. This revocation is effective only as to
19 the interests in the property of owners who sign this revocation.

20 IDENTIFYING INFORMATION

21 Owner or Owners of Property Making This Revocation:

22 _____

23 Printed name

Mailing address

24 _____

25 Printed name

Mailing address

26 Legal description of the property:

27 _____

28 _____

29 REVOCATION

30 I revoke all my previous transfers of this property by transfer on death deed.

1 SIGNATURE OF OWNER OR OWNERS MAKING THIS REVOCATION

2 _____ [(SEAL)] _____

3 Signature

4 Date

5 _____ [(SEAL)] _____

6 Signature

7 Date

8 ACKNOWLEDGMENT

9 (insert acknowledgment here)

10 (back of form)

11 COMMON QUESTIONS ABOUT THE USE OF THIS FORM

12 How do I use this form to revoke a Transfer on Death (TOD) deed? Complete this form. Have it acknowledged
 13 before a notary public or other individual authorized to take acknowledgments. Record the form in the public
 14 records in the office of the county clerk and recorder of each county where the property is located. The form must
 15 be acknowledged and recorded before your death or it has no effect.

16 How do I find the "legal description" of the property? This information may be on the TOD deed. It may also be
 17 available in the office of the county clerk and recorder for the county where the property is located. If you are not
 18 absolutely sure, consult a lawyer.

19 How do I "record" the form? Take the completed and acknowledged form to the office of the county clerk and
 20 recorder of deeds of the county where the property is located. Follow the instructions given by the county clerk
 21 and recorder to make the form part of the official property records. If the property is located in more than one
 22 county, you should record the form in each of those counties.

23 I am being pressured to complete this form. What should I do? Do not complete this form under pressure. Seek
 24 help from a trusted family member, friend, or lawyer.

25 I have other questions about this form. What should I do? This form is designed to fit some but not all situations.
 26 If you have other questions, consult a lawyer.

27

28 **NEW SECTION. Section 100. Prior executed and recorded beneficiary deed.** Any beneficiary deed
 29 that was executed and recorded prior to [the effective date of this act] and which complied with the law in effect
 30 when it was recorded, shall be deemed to be a transfer on death deed for the purposes of [sections 93 through

~~110 85 THROUGH 102 83 THROUGH 100].~~

~~Section 111. Section 72-7-305, MCA, is amended to read:~~

~~"72-7-305. Permissible appointment. (1) A powerholder of a general power of appointment that permits appointment to the powerholder or the powerholder's estate may make any appointment, including an appointment in trust or creating a new power of appointment, that the powerholder could make in disposing of the powerholder's own property.~~

~~(2) A powerholder of a general power of appointment that permits appointment only to the creditors of the powerholder or of the powerholder's estate may appoint only to those creditors.~~

~~(3) Unless the terms of the instrument creating a power of appointment manifest a contrary intent, the powerholder of a nongeneral power may:~~

~~(a) make an appointment in any form, including an appointment in trust, in favor of a permissible appointee;~~

~~(b) create a general power in a permissible appointee; or~~

~~(c) create a nongeneral power in any person to appoint to one or more of the permissible appointees of the original nongeneral power; or~~

~~(d) create a nongeneral power in a permissible appointee to appoint to one or more persons if the permissible appointees of the new nongeneral power include the permissible appointees of the original nongeneral power."~~

Section 101. Section 72-7-401, MCA, is amended to read:

"72-7-401. Disclaimer. As provided by ~~72-2-811~~ sections 55 and 56-48 AND 49 47 AND 48:

(1) a powerholder may disclaim all or part of a power of appointment; and

(2) a permissible appointee, appointee, or taker in default of appointment may disclaim all or part of an interest in appointive property."

Section 102. Section 72-15-301, MCA, is amended to read:

"72-15-301. Compensation of public administrator. (1) The public administrator must receive and shall collect for the administrator's own use as full compensation for services under this chapter, ~~including attorney fees, the amounts~~ the amount provided for in 72-3-631 ~~and 72-3-633~~.

(2) When the public administrator is appointed conservator of the estate of a protected person pursuant to chapter 5, part 4, of this title, the court may order that a reasonable sum be deducted from payments due to the protected person or from the protected person's estate to be paid to the public administrator as full compensation for the public administrator's services, excluding court costs and attorney fees. The total sum deducted as compensation for the public administrator may not be less than \$100."

NEW SECTION. Section 103. Directions to code commissioner. (1) The code commissioner is instructed to renumber 72-2-223, 72-2-225, 72-2-228, and 72-2-230 in accordance with the Uniform Probate Code.

(2) The code commissioner is instructed to change all internal references within and to the renumbered sections in the Montana Code Annotated, including within sections enacted or amended by the 2019 legislature, to reflect new section numbers assigned pursuant to this section.

NEW SECTION. Section 104. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 72, chapter 1, and the provisions of Title 72, chapter 1, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 72, and the provisions of Title 72 apply to [section 2].

(3) [Sections 12 through ~~29~~ 22] are intended to be codified as an integral part of Title 72, chapter 2, part 2, and the provisions of Title 72, chapter 2, part 2, apply to [sections 12 through ~~29~~ 22].

~~———— (4) [Section 40 33] is intended to be codified as an integral part of Title 72, chapter 2, part 7, and the provisions of Title 72, chapter 2, part 7, apply to [section 40 33].~~

~~(5)(4) [Sections 45 through 63 38 THROUGH 56 37 THROUGH 55] are intended to be codified as an integral part of Title 72, chapter 2, part 8, and the provisions of Title 72, chapter 2, part 8, apply to [sections 45 through 63 38 THROUGH 56 37 THROUGH 55].~~

~~(6) [Section 65] is intended to be codified as an integral part of Title 72, chapter 3, part 1, and the provisions of Title 72, chapter 3, part 1, apply to [section 65].~~

~~(7)(6)(5) [Section 72 ~~64~~ 63] is intended to be codified as an integral part of Title 72, chapter 3, part 3, and the provisions of Title 72, chapter 3, part 3, apply to [section 72 ~~64~~ 63].~~

~~(8)(7)(6) [Section 84 ~~73~~ 72] is intended to be codified as an integral part of Title 72, chapter 3, part 6, and the provisions of Title 72, chapter 3, part 6, apply to [section 84 ~~73~~ 72].~~

(9)(8)(7) [Section 94 ~~83~~ 82] is intended to be codified as an integral part of Title 72, chapter 6, part 1, and the provisions of Title 72, chapter 6, part 1, apply to [section 94 ~~83~~ 82].

(10)(9)(8) [Sections 93 through 110 ~~85 THROUGH 102~~ 83 THROUGH 100] are intended to be codified as an integral part of Title 72, chapter 6, and the provisions of Title 72, chapter 6, apply to [sections 93 through 110 ~~85 THROUGH 102~~ 83 THROUGH 100].

NEW SECTION. Section 105. Repealer. The following sections of the Montana Code Annotated are repealed:

72-2-124.	Parent and child relationship.
72-2-215.	Reporting duty of personal representative in estate involving alien heir.
72-2-221.	Elective share.
72-2-222.	Augmented estate.
72-2-224.	Waiver of right to elect and of other rights.
72-2-226.	Effect of election on statutory benefits.
72-2-227.	Sources from which elective share payable.
72-2-715.	Class gifts construed to accord with intestate succession.
72-2-811.	Disclaimer of property interests.
72-2-1017.	Honorary trusts -- trusts for pets.
72-3-113.	Rules for determining location of property.
72-3-309.	Testimony of attesting witnesses in contested cases -- presumptions for self-proved will.
72-3-633.	Compensation of attorney.
72-6-121.	Beneficiary deed -- form -- definitions.
72-6-123.	Liability for creditor claims and statutory allowances.

- END -

MINUTES

MONTANA SENATE 66th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: Chair Keith Regier, on February 13, 2019 at 9:00 AM, in Room 303
Capitol

ROLL CALL

Members Present:

Sen. Keith Regier, Chair (R)
Sen. Jennifer Fielder, Vice Chair (R)
Sen. Diane Sands, Vice Chair (D)
Sen. Bryce Bennett (D)
Sen. John Esp (R)
Sen. Jen Gross (D)
Sen. Steve Hinebaugh (R)
Sen. Margaret (Margie) MacDonald (D)
Sen. Scott Sales (R)
Sen. Gordon Vance (R)

Members Excused: None

Members Absent: None

Staff Present: Julianne Burkhardt, Legislative Branch
Noah Horan, Committee Secretary

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted: SB 213, 2/8/2019; SB 225, 2/8/2019; SB 229, 2/8/2019

Executive Action: SB 205 DO PASS

HEARING ON SB 229

Opening Statement by Sponsor:

09:01:37 Sen. Brian Hoven (R), SD 13, opened the hearing on SB 229, Limit liability of private educational programs in admitting certain criminals.

09:01:48 Sen. MacDonald entered the hearing.

Proponents' Testimony:

09:03:41 Steve Cape, Montana Coalition for Safety and Justice

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

09:06:46 Sen. Sands

09:07:19 Sen. Hoven

09:07:47 Sen. Sands

09:08:34 Sen. Hoven

09:09:21 Sen. Sands

09:09:33 Sen. Esp

09:09:50 Sen. Hoven

09:09:59 Sen. Esp

09:10:18 Sen. Hoven

09:10:31 Sen. Gross

09:11:01 Sen. Hoven

09:12:20 Sen. Gross

09:12:33 Sen. Hoven

09:12:46 Sen. Sands

09:13:06 Sen. Hoven

Closing by Sponsor:

09:13:18 Sen. Hoven

09:13:46 President Sales entered the hearing.

HEARING ON SB 213

Opening Statement by Sponsor:

09:14:20 Sen. Edith (Edie) McClafferty (D), SD 38, opened the hearing on SB 213, Generally revise evidence laws.

Proponents' Testimony:

09:16:05 Mark Murphy, Montana Association of Chiefs of Police (MACOP), speaking on behalf of Montana League of Cities and Towns (MLCT)

09:19:40 Jerry Williams, Montana Police Protective Association (MPPA)

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

09:21:03 Sen. Sands
09:21:35 Mr. Murphy, MACOP
09:22:22 Sen. MacDonald
09:23:04 Mr. Williams, MPPA

Closing by Sponsor:

09:24:30 Sen. McClafferty

HEARING ON SB 225

Opening Statement by Sponsor:

09:25:08 Sen. Steve Fitzpatrick (R), SD 10, opened the hearing on SB 225, Generally revise probate laws.

Proponents' Testimony:

09:29:01 Ed Eck, Montana State Bar
09:44:50 Molly Considine, Montana State Bar
09:56:14 Dirk Williams, Montana State Bar
10:05:01 John Van Atta, Montana State Bar

[**EXHIBIT\(jus30a01\)**](#)

Opponents' Testimony:

10:12:43 Anita Milanovich, Montana Family Foundation (MFF)
10:18:25 Rose Scheid, self
10:21:10 Matt Brower, Montana Catholic Conference

10:21:24 Sen. Vance left the hearing.

Informational Testimony: None

Questions from Committee Members and Responses:

10:22:03 Sen. Gross
10:22:41 Mr. Eck, Montana State Bar
10:24:06 Sen. Fielder
10:24:18 Mr. Eck
10:24:41 Sen. Fielder
10:24:45 Mr. Eck
10:25:15 Sen. Sands
10:25:58 Mr. Eck
10:26:21 Sen. Sands
10:26:48 Mr. Eck
10:27:34 Sen. Sands
10:28:27 Mr. Eck
10:28:36 Sen. MacDonald
10:29:09 Ms. Considine, Montana State Bar
10:29:45 Chair Regier
10:30:05 Mr. Eck

10:30:41 Chair Regier
10:30:46 Mr. Eck
10:30:54 Sen. Gross
10:31:54 Ms. Scheid, self

10:32:32 Sen. Fielder left the hearing.

10:33:52 Sen. Esp
10:34:14 Ms. Milanovich, MFF
10:34:57 Sen. Sands
10:35:36 Mr. Eck
10:36:18 Sen. Sands

Closing by Sponsor:

10:36:49 Sen. Fitzpatrick

EXECUTIVE ACTION ON SB 205

10:38:14 **Motion:** Sen. Sands moved that **SB 205 DO PASS.**

Discussion:

10:38:36 Chair Regier

10:38:48 **Vote:** Motion carried unanimously by voice vote. Sen. Fielder and Sen. Vance voted by proxy.

10:39:19 Sen. MacDonald

[EXHIBIT\(jus30a02\)](#)

[EXHIBIT\(jus30a03\)](#)

10:40:01 Sen. Sands
10:40:37 Chair Regier

ADJOURNMENT

Adjournment: 10:41 AM

Noah Horan, Secretary

nh

Additional Documents:

EXHIBIT([jus30aad.pdf](#))

Senate Bill No. 225

SENATE JUDICIARY

Exhibit No. 1
Date: 2/13/19
Bill No. SB 225

A Bill to Update Montana's Uniform Probate Code

Sponsored by Senator Steve Fitzpatrick
Senator Mary McNally, Representative Kimberly Dudik, and Representative Bill Mercer

Outline of Major Provisions in Bill

Prepared by the Business Estates, Trusts, Tax, and Real Property Section
(the "B-E-T-T-R" Section) of the State Bar of Montana.

E. Edwin Eck
Professor Emeritus
Alexander Blewett III School of Law of the University of Montana
406-243-6534

Dirk A. Williams
Attorney at Law
Crowley Fleck, PLLP
406-523-3600

Background. The Uniform Probate Code (UPC) was first proposed by the Uniform Law Commission (ULC) in 1969. Since then, it has been enacted by the Legislatures of 22 states, including Montana, North Dakota, South Dakota, and Idaho, and it has influenced the development of the law in the remaining 28 states. Montana was one of the first states to adopt the UPC and did so in 1974.

The UPC has served Montana consumers well since its 1974 enactment by the Legislature. It has greatly simplified the administration of estates and provided rules for nonprobate transfers as well. The UPC anticipates problems. Further because of substantial section-by-section comments and because of case law from the 22 states that have adopted the UPC, the meanings of UPC provisions are easily ascertainable, which results in less litigation in Montana and therefore less expense to Montanans.

During the 50 years since the UPC was first proposed, the ULC has suggested amendments in response to changes in society, court decisions in some states, and suggestions by consumer groups and bar associations in the various states. The ULC proposed the last major set of amendments in 2008. In the opinion of the BETTR Section, these amendments make some important changes. However, the changes are evolutionary -- not revolutionary.

Montana has not comprehensively considered any amendments to the UPC since 1995 and this bill provides Montana an opportunity to do so.

The purpose of this outline is to alert the reader to the most important changes the bill would make to Montana law if enacted.

The bill affects specified sections found in Chapters 1, 2, 3, 4, and 6 of Title 72, Montana Code Annotated. Chapter 5 of Title 72, "Persons Under Disability – Guardianship and Conservatorship" is not part of this bill. Senate Bill 202 deals with changes to that area of the law.

One. **Inflation Adjustments in Intestacy Amounts.** If a married person dies without a will ("intestate"), the UPC provides that all of that person's probate assets go to the surviving spouse, so long as the parties' children are children of both spouses. If some of the children are not, the surviving spouse still receives the bulk of the estate, which is more specifically defined in dollar amounts plus a fraction of the remainder of the estate over that dollar amount. For example, if the decedent has children who are not descendants of the surviving spouse, the surviving spouse is entitled to the first \$100,000 of assets and

½ of the balance of the estate. The children take the balance. The bill would increase the \$100,000 figure to \$150,000 to reflect inflation. [Bill § 8]

Two. Parent barred from inheriting from a deceased child in certain circumstances. If an unmarried child has no children or grandchildren and dies without a will, the child's parents would inherit under existing Montana law. Existing law requires that the parent must have openly treated the child as the parent's child and not refused to support the child.

Section 12 of **the bill provides more exacting language.** The parent inherits, unless his/her parental rights have been terminated, or where immediately before death, there is "clear and convincing evidence" that parental rights could have been terminated under state law. Existing Montana law, MCA § 42-2-607, lists 5 specific grounds for terminating the parent-child relationship.

Three. Effects of adoption on inheritance. Existing law provides that when a child is adopted, the adopted parents become the intestacy parents. Generally, the adopted child inherits from the adoptive parents (not the genetic parents) and the adoptive parents inherit from the adoptive child.

The bill would not change existing law in that regard. However, **the bill would expand the inheritance rights of an adopted child in a few instances.** For example, section 17 of the bill would permit:

a. The adopted child to inherit through the child's genetic parents, if the adoption occurred after the death of both genetic parents. The assumption is that if adoption becomes necessary due to the death of both parents, the genetic families will continue to maintain contact with the child. Thus, for example, the child could inherit from the child's genetic grandparents.

b. The adopted child to inherit from and through the child's genetic parents, if the child is adopted by a genetic relative, or a spouse of a relative. For the purposes of this provision, a relative is defined as a grandparent or descendant of a grandparent of the child.

Four. Assisted Reproduction Technology and Inheritance. Existing Montana law does not provide any rules concerning inheritance rights when children are conceived as the result of assisted reproduction technology. With the increased use of such technology, third-party egg and sperm donors, gestational carriers, and posthumously-conceived children, courts will have to make more decisions on these matters, without statutory guidance.

The bill would address most of these inheritance circumstances in advance, and thereby minimize litigation and the costs associated with litigation. The goal of these provisions is to **protect children's inheritances.** The bill adds two new sections to the UPC. Section 18 of the bill deals with the inheritance rights of children conceived by assisted reproduction. Section 19 of the bill deals with children born to surrogate carriers. Both sections set forth rules which reflect common sense. The following are examples:

a. A "gestational carrier," namely a woman who carries and gives birth to the child under an agreement with the intended parents, is not treated as a parent for inheritance purposes. Rather, the intended parents are treated as parents.

b. A "birth mother," namely the woman who gives birth to the child, so long as the woman is not a gestational carrier.

c. The husband of the child's birth mother, if the husband provided the sperm that the birth mother used, is treated as a parent.

d. A "third-party donor" who provides the genetic material used for assisted reproduction is not treated as a parent, unless the donor consented to assisted reproduction by the birth mother and they intended that he would be the other parent of the child.

Although these examples explain many of the common circumstances applicable to inheritance when assisted reproduction is used, the bill covers more circumstances and includes a list of circumstances when the parent-child relationship is presumed.

The bill takes no position on the legality of gestation (or surrogacy) agreements. The bill only deals with rights of inheritance -- namely, who receives a decedent's assets when the decedent dies without a will (intestate) or other mechanism to transfer assets.

Five. Elective Share. The Elective Share provisions protect the surviving spouse from disinheritance. Under a partnership theory of marriage, a surviving spouse (wife or husband) in a long-term marriage (15 or more years) is entitled to 50% of the couple's collective assets. Usually, both husband and wife have contributed (directly or indirectly) to the acquisition of the assets or their preservation.

The surviving spouse's percentage of the estate is phased in during the first 15 years of marriage. If the parties have married for only one year, the percentage is 3%. That percentage increases, at the rate of 3% per year of marriage, until after 10 years of marriage, it increases at the rate of 4% per year. As noted, if the parties have been married for 15 or more years when the first spouse dies, the surviving spouse is entitled to 50% of the parties' assets.

To a great extent, the elective share provisions of the bill are the same as existing Montana law. The bill would clarify some matters. For example, under existing Montana law, the parties can enter into a premarital agreement and agree to accept less than the full amount of the elective share. However, existing Montana law is silent on whether the parties can enter into an effective agreement after marriage. Section 29 of the bill expressly authorizes post-nuptial agreements.

In order to be enforceable, the agreement must be voluntary, it must not be the result of duress, and the surviving must have access to independent legal representation and must have received adequate financial disclosure. These concepts are explained in detail in section 29 of the bill. They are not as well defined in current Montana statutory law.

Additionally, complex elective share concepts, such as defining what is included in the calculations, have been broken down into shorter, easier-to-read sections.

Finally, a nonuniform provision of existing Montana law would be deleted if the bill is enacted. Existing Montana law excludes pension, profit-sharing and retirement benefit plan benefits from the calculation of the couple's assets. Thus, a husband could name his paramour as the beneficiary of his IRA and his surviving spouse would receive nothing from the IRA upon the husband's death. Given the significant amount of assets that currently are in many IRA accounts, the potential for major abuse is significant. The bill would eliminate this exception and subject such benefits to the surviving spouse's percentage share.

Six. Inflation Adjustments to Homestead, Exempt Property, and Family Allowances. The UPC includes three allowances that protect the decedent's surviving spouse and specified other family members from some unsecured creditors. The bill would increase the amount of the Homestead allowance from \$20,000 to \$22,500, the Family allowance from \$18,000 to \$27,500, and the Exempt Property allowance from \$10,000 to \$15,000. [Bill §§ 34, 35, and 36]

Seven. Rules of Will Construction. Existing Montana law includes a number of provisions that govern the construction, or interpretation, of will provisions. The purpose is primarily **to avoid, or minimize, litigation and its associated costs by setting forth clear rules** that assist in interpreting the will after the

death of the testator (a person who makes a will). Of course, the testator is free to include specific provisions in the testator's will that would govern the distribution of the testator's assets in a fashion different from these rules of construction.

The bill does not change most of these rules. A few of the rules are clarified and one or two are modified.

- Specific Devise. Gifts in a will are called "devises" and are classified in a number of ways. A "general" devise could come from any of the testator's assets. For example, "I devise \$100 to each of my cousins." The \$100 devises could come from any of the estate's assets. A "specific" devise is the devise of a uniquely identifiable item. For example, "I devise my 1969 Buick Grand Sport to my brother." If the testator sells or otherwise disposes of that item prior to the testator's death, the question could arise whether the will's designated beneficiary of that item would receive something else as a replacement. The bill provides that the will beneficiary would not, unless it is established that such would be inconsistent with the testator's manifested plan of distribution or that at the time the will was made, or the date the testator sold that item, the testator did not intend that result. Thus, the general rule is that when a testator makes a specific devise and later disposes of the devised asset, the testator knows that the devise is no longer effective. [Bill § 38, MCA § 72-2-616]
- Class Gifts. A class gift is one in which the beneficiaries are not named individually, but rather are described in relational terms. For example, if a testator wants to make gifts to the testator's grandchildren, the testator might simply identify the beneficiaries in the testator's will as "my grandchildren." The testator recognizes that additional grandchildren could be born after the testator signs the will, but before the testator's death. The bill applies the same rules that are part of Montana's intestacy statutes to will construction. Thus, for example, grandchildren who result from adoption, would be included in the gift in the same fashion as they would benefit under Montana's intestacy statutes. [Bill § 40, MCA § 72-2-715]
- Antilapse. A devise in a will to a person who predeceases the testator is said to "lapse." Neither the beneficiary nor any of his family receive the gift. Montana's existing antilapse statutes provide some precisely-worded exceptions to this general rule. For example, if the beneficiary is the testator's brother, the brother's children would receive the gift. One section of Montana statutes deals with wills [Bill § 37, MCA § 72-2-613], and another section deals with life insurance, retirement plans, account pay-on-death provision, and transfer-on-death provisions. [Bill § 41, MCA § 72-2-716] Similarly, a third section deals with specified future beneficiaries of a trust. [Bill § 42, MCA § 72-2-717] The bill would further clarify these exceptions.

Eight. Reformation of Wills to Correct Mistakes. Courts have been reluctant to correct mistakes in wills. The courts are legitimately concerned that correcting mistakes could open the floodgates of litigation which could dissipate the decedent's assets. This reluctance has been most profound when the mistake is that of omission, that is, the will omitted a beneficiary and the would-be beneficiary seeks a distribution after the decedent's death.

The bill would allow courts to reform the terms of a will, even if unambiguous, **if clear and convincing evidence establishes doing so is necessary to implement the testator's intention.** [Bill § 45] Existing Montana Trust Law already includes a similar provision. [MCA § 72-38-415]

Nine. Disclaimers. A beneficiary does not have to accept a distribution from an estate and can file what is known as a "disclaimer." When a beneficiary files a disclaimer, the disclaiming beneficiary does not receive the distribution and the disclaiming beneficiary is treated as predeceasing the testator. The

disclaimed property then passes to the next person in line, whether under the decedent's will or through the laws of intestacy if there was no will.

The disclaimer is a versatile and occasionally utilized post-mortem (death) estate planning tool. Disclaimers can, under specified circumstances, save a family taxes while continuing to follow the decedent's expressed intent. Disclaimers can also be used to attempt to keep the disclaimed property from the disclaimant's creditors.

Existing Montana law concerning disclaimers consists of one code section. To a great extent, that section tracks a provision of the Internal Revenue Code, with little guidance. For example, existing Montana law requires the disclaimer of a will provision to be made within 9 months of the decedent's death. Reflecting the fact that many disclaimers are not made because of tax purposes, the bill eliminates this specific time limit. The only bar to a disclaimer is the beneficiary's acceptance of the property.

Also, the bill provides detailed rules for several types of disclaimers that have not been explicitly addressed in existing law. For example, the bill provides detailed rules for the disclaimer of joint tenancy property, disclaimers by trustees, and disclaimers of powers held by fiduciaries.

Ten. Further Simplification of Procedures. The Bill:

- clarifies the burden and standards of proof in will contests. [Bill § 72]
- narrows the class of people entitled to a copy of the estate inventory, from "interested persons" under current law to "heirs, devisees and creditors whose claims have not been satisfied." [Bill § 78]
- eliminates requirements that the personal representative must first obtain the consent of the heirs or the court before abandoning worthless property or negotiating settlement of claims against the estate. Such requirements can make administration cumbersome and potentially costly. [Bill §§ 80 and 85]
- clarifies that a personal representative has the same powers over assets of an estate that the owner would have, and that the personal representative has access to digital assets as provided in the Uniform Fiduciary Access to Digital Assets Act, which the Legislature adopted in 2017. [Bill § 81]
- clarifies that amounts distributed to satisfy family member's rights to the homestead, exempt property, and family allowances are true priorities, and are not available to satisfy unsecured creditor claims. [Bill § 87]

Eleven. Compensation of Personal Representative. Current Montana law includes a non-UPC provision, which imposes a formula limiting a personal representative's compensation to "3% of the first \$40,000 of value of the estate . . . and 2% of the value of estate assets in excess of \$40,000..." MCA § 72-3-631. **The bill would make Montana law consistent with the UPC as promulgated by the ULC and simply provides that "a personal representative is entitled to reasonable compensation for services."** [Bill § 83]

The existing Montana formula has occasionally led to unattended consequences. On one hand, the formula has provided an argument for some personal representatives of large estates that a 2% change is reasonable in circumstances when, in fact, such a charge is too high. On the other hand, the formula has discouraged other personal representatives from agreeing to administer small estates. The bill would eliminate these unintended consequences by eliminating the formula and requiring that compensation be reasonable in all estates.

Existing Montana law authorizes the personal representative to employ persons, including attorneys, auditors, and investment advisors [MCA § 72-3-613(21)] and requires that their compensation be reasonable. Further, existing Montana law permits an estate beneficiary, or other interested person, to challenge the reasonableness of compensation paid to persons employed by the personal representative. MCA § 72-3-634. The bill would repeal MCA § 72-3-633 which limits attorney fees to 1 ½ times the amount allowed for personal representatives. In light of the change in personal representative fees to a reasonable standard, it does not make sense that attorneys could be paid 1 ½ times a reasonable fee. **Attorney fees must be reasonable.**

The Montana Supreme Court has established a seven-part test applicable to all civil matters by which the reasonableness of an attorney fee is determined. The court evaluates the requirements of the case, such as technical skills, the time required, the complexity of the issues, and the results obtained.

Twelve. Creditor Rights concerning non-probate transfers. The UPC authorizes a number of nonprobate transfers, such as transfer on death brokerage accounts and deeds and pay on death bank accounts. A new section clarifies that unsecured creditors can reach these assets only to the same extent they can reach probate assets. Further, if the decedent did not specify which of her assets would be used first to satisfy legitimate creditor claims in her will or trust, the same section provides a priority for payment. [Bill § 91]

Thirteen. Uniform Real Property Transfer on Death Act. As promulgated by the ULC, the UPC now includes the Uniform Real Property Transfer on Death Act, as part of the Uniform Probate Code. Montana has previously adopted the Uniform Transfer on Death Security Registration Act, which permits the transfer of securities, such as stocks and bonds, without the necessity of probate. Montana has also adopted the Uniform Multiple-Party Accounts Act, which permits the transfer of bank accounts without the necessity of probate. Both of these uniform acts are part of Montana's Uniform Probate Code. The addition of the Uniform Real Property Transfer on Death Act to the Montana Uniform Probate Code would provide the benefits of another uniform act that permits the transfer of real property without probate. **The uniform act is more comprehensive than existing Montana law concerning the non-probate transfer of real property.** Further, if adopted, Montana landowners and courts would have the benefit of the extensive comments the Uniform Law Commission has drafted about the act and would also receive guidance from the courts of the 18 states that have already adopted the Uniform Real Property Transfer on Death Act. Finally, beneficiary deeds that have been signed and recorded pursuant to existing Montana law would be respected under the bill. [Bill §§ 93-110]

MINUTES

MONTANA SENATE 66th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: Chair Keith Regier, on February 19, 2019 at 9:00 AM, in Room 303 Capitol

ROLL CALL

Members Present:

Sen. Keith Regier, Chair (R)
Sen. Jennifer Fielder, Vice Chair (R)
Sen. Diane Sands, Vice Chair (D)
Sen. Bryce Bennett (D)
Sen. John Esp (R)
Sen. Jen Gross (D)
Sen. Steve Hinebaugh (R)
Sen. Margaret (Margie) MacDonald (D)
Sen. Gordon Vance (R)

Members Excused: Sen. Scott Sales (R)

Members Absent: None

Staff Present: Julianne Burkhardt, Legislative Branch
Noah Horan, Committee Secretary

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted: SB 220, 2/15/2019

Executive Action: SB 22 BE TABLED; SR 11 BE ADOPTED; SB 238 BE TABLED;
SB 155 DO PASS AS AMENDED; SB 225 DO PASS AS
AMENDED

09:01:22 Sen. Fielder assumed the chair.

HEARING ON SB 220

Opening Statement by Sponsor:

09:01:38 Sen. Keith Regier (R), SD 3, opened the hearing on SB 220, Generally revise probation laws.

[EXHIBIT\(jus35a01\)](#)

Proponents' Testimony:

09:05:06 Jon Metropoulos, Missoula Correctional Services (MCS)

[EXHIBIT\(jus35a02\)](#)

09:09:44 Sue Wilkins, Missoula Correctional Services (MCS)

[EXHIBIT\(jus35a03\)](#)

09:15:21 Amanda Green, Alternatives

[EXHIBIT\(jus35a04\)](#)

09:19:41 Erin McGowan, Montana Community Corrections Association (MCCA)

Opponents' Testimony:

09:20:42 SK Rossi, American Civil Liberties Union of Montana (ACLU)

09:21:13 Sen. Vance left the hearing.

Informational Testimony:

09:23:02 Greg Mohr, Montana Magistrates Association

Opponents' Testimony:

09:23:19 Perry Johnson, Public Safety Officer Standards and Training Council (POST)

Questions from Committee Members and Responses:

09:26:36 Sen. Sands

09:26:59 Sen. Regier

09:27:08 Sen. MacDonald

09:27:40 Ms. Wilkins, MCS

09:27:45 Sen. MacDonald

09:28:11 Ms. Wilkins

09:29:09 Sen. MacDonald

09:29:20 Ms. Wilkins

09:29:42 Sen. Gross

09:30:20 Mr. Metropoulos, MCS

09:31:47 Sen. Gross

09:32:28 Mr. Metropoulos

09:32:49 Sen. Gross

09:33:15 Mr. Johnson, POST

09:33:42 Sen. Gross

09:34:01 Mr. Johnson

09:34:29 Sen. Sands

09:34:40 Mr. Johnson

Closing by Sponsor:

09:35:24 Sen. Regier

09:36:11 Sen. Regier resumed the chair.

EXECUTIVE ACTION ON SB 22

09:37:26 **Motion:** Sen. Fielder moved that **SB 22 DO PASS.**

Discussion:

09:38:04 Sen. Sands

09:38:13 Sen. Gross

09:38:40 Chair Regier

09:38:49 Sen. Sands

09:39:16 **Substitute Motion/Vote:** Sen. Sands made a substitute motion that **SB 22 BE TABLED.** Substitute Motion carried 9-1 by roll call vote with Sen. K. Regier voting no. Sen. S. Sales and Sen. Vance voted by proxy.

EXECUTIVE ACTION ON SR 11

09:40:21 **Motion:** Sen. Fielder moved that **SR 11 BE ADOPTED.**

Discussion:

09:40:38 Sen. Sands

09:40:52 Sen. Gross

09:41:17 **Vote:** Motion carried unanimously by voice vote. Sen. S. Sales and Sen. Vance voted by proxy.

EXECUTIVE ACTION ON SB 238

09:42:29 Julianne Burkhardt, Legislative Services Division (LSD)

09:42:37 Chair Regier

09:43:00 Sen. Sands

09:43:54 **Motion:** Sen. Fielder moved that **SB 238 DO PASS.**

09:43:59 **Substitute Motion/Vote:** Sen. Sands made a substitute motion that **SB 238 BE TABLED.** Substitute Motion carried 7-3 by roll call vote with Sen. Esp, Sen. Hinebauch and Sen. K. Regier voting no. Sen. S. Sales and Sen. Vance voted by proxy.

EXECUTIVE ACTION ON SB 155

09:45:30 **Motion:** Sen. Fielder moved that **SB 155 DO PASS.**

Discussion:

09:45:36 Ms. Burkhardt, LSD
09:46:18 Chair Regier
09:46:31 Ms. Burkhardt

09:46:52 **Motion:** Sen. Fielder moved that **SB 155 BE AMENDED.**

Discussion:

09:47:08 Sen. Fielder
09:48:03 Chair Regier
09:48:15 Ms. Burkhardt

09:48:52 Sen. Vance returned to the meeting.

09:49:04 Sen. Fielder
09:49:13 Ms. Burkhardt
09:50:20 Sen. Esp
09:50:29 Sen. Fielder
09:50:36 Ms. Burkhardt
09:51:01 Sen. Fielder
09:51:10 Ms. Burkhardt
09:51:16 Sen. Fielder
09:52:20 Sen. Sands
09:53:21 Sen. MacDonald

09:53:52 **Vote:** Motion carried 7-2 by roll call vote with Sen. Bennett and Sen. Sands voting no. Sen. S. Sales was excused.

09:54:38 **Motion:** Sen. Fielder moved that **SB 155 DO PASS AS AMENDED.**

Discussion:

09:54:56 Sen. Gross
09:55:45 Sen. Sands
09:56:31 Sen. MacDonald
09:56:53 Ms. Burkhardt
09:57:00 Sen. Bennett

09:58:27 **Vote:** Motion carried unanimously by roll call vote. Sen. S. Sales voted by proxy.

EXECUTIVE ACTION ON SB 225

09:59:32 **Motion:** Sen. Fielder moved that **SB 225 DO PASS.**

Discussion:

09:59:39 Ms. Burkhardt
10:00:12 Chair Regier
10:00:20 Sen. Sands

10:00:58 **Motion:** Sen. Fielder moved that **SB 225 BE AMENDED.**

[**EXHIBIT\(jus35a05\)**](#)

Discussion:

10:01:11 Ms. Burkhardt

10:07:00 Sen. Sands

10:07:57 Ed Eck, Montana State Bar

10:09:09 **Vote:** Motion carried 9-1 by roll call vote with Sen. Bennett voting no. Sen. S. Sales voted by proxy.

10:09:43 **Motion:** Sen. Fielder moved that **SB 225 DO PASS AS AMENDED.**

Discussion:

10:09:50 Sen. Gross

10:10:25 **Vote:** Motion carried 8-2 by roll call vote with Sen. Hinebauch and Sen. Vance voting no. Sen. S. Sales voted by proxy.

ADJOURNMENT

Adjournment: 10:12 AM

Noah Horan, Secretary

nh

Additional Documents:

Additional Documents:

EXHIBIT([jus35aad.pdf](#))

Amendments to Senate Bill No. 225
1st Reading Copy

Requested by Senator Steve Fitzpatrick

For the Senate Judiciary Committee

Prepared by Julianne Burkhardt
February 18, 2019 (1:19pm)

1. Title, page 1, line 12.

Strike: "72-7-305,"

Strike: "72-2-124,"

2. Title, page 1, line 13.

Strike: "72-2-1017,"

3. Page 11, line 8 through page 16, line 29.

Strike: section 13 through section 19 in their entirety

Renumber: subsequent sections

4. Page 17, line 1.

Strike: "20 through 29"

Insert: "13 through 22"

5. Page 17, line 2.

Strike: "24"

Insert: "17"

6. Page 17, line 3.

Strike: "24"

Insert: "17"

7. Page 17, line 28.

Strike: "24(2)(b)"

Insert: "17(2)(b)."

8. Page 18, line 1 through line 2.

Strike: "20" on line 1 through "29" on line 2

Insert: "13 through 22"

9. Page 18, line 4.

Strike: "26 and 28(1)(a)"

Insert: "19 and 21(1)(a)"

10. Page 18, line 5 through line 6.

Strike: "28(3)" on line 5 through "(4)" on line 6

Insert: "21(3) and (4)"

11. Page 18, line 9.

Strike: "28(3) and (4)"

Insert: "21(3) and (4)"

12. Page 18, line 16.

Strike: "27"

Insert: "20"

13. Page 18, line 17.

Strike: "23" through "26"

Insert: "16, 17, 18, and 19"

14. Page 19, line 22.

Strike: "23"

Insert: "16"

15. Page 21, line 22.

Strike: "24(1) or (2)"

Insert: "17(1) or (2)"

16. Page 21, line 27.

Strike: "23 or 25"

Insert: "16 or 18"

17. Page 22, line 25.

Strike: "24" through "26"

Insert: "17, 18, or 19"

18. Page 23, line 3.

Strike: "24" through "26"

Insert: "17, 18, or 19"

19. Page 23, line 11.

Strike: "23"

Insert: "16"

20. Page 23, line 13.

Strike: "25"

Insert: "18"

21. Page 23, line 16.

Strike: "26"

Insert: "19"

22. Page 23, line 18.

Strike: "26"
Insert: "19"

23. Page 23, line 19.
Strike: "22(2)"
Insert: "15(2)"

24. Page 23, line 24.
Strike: "24(1) and (2)"
Insert: "17(1) and (2)"

25. Page 25, line 24.
Strike: "28(3) and (4)"
Insert: "21(3) and (4)"

26. Page 26, line 22.
Strike: "24"
Insert: "17"

27. Page 26, line 28.
Strike: "24"
Insert: "17"

28. Page 27, line 6.
Strike: "28"
Insert: "21"

29. Page 27, line 11.
Strike: "28"
Insert: "21"

30. Page 27, line 17.
Strike: "24"
Insert: "17"

31. Page 29, line 6.
Strike: "28"
Insert: "21"

32. Page 37, line 2.
Following: ""Adoptee""
Strike: remainder of line 2
Insert: "means an individual who is adopted."

33. Page 37, line 3.
Following: "reproduction""
Strike: remainder of line 3
Insert: "means a child conceived by means of assisted
reproduction by a woman other than a gestational carrier."

34. Page 37, line 6 through line 7.

Following: "adoptee""

Strike: remainder of line 6 and line 7.

Insert: "means behaving toward an adoptee in a manner consistent with being the adoptee's parent and performing functions that are customarily performed by a parent, including fulfilling parental responsibilities toward the adoptee, recognizing or holding out the adoptee as the individual's child, materially participating in the adoptee's upbringing, and residing with the adoptee in the same household as a regular member of that household."

35. Page 37, line 8.

Following: "child""

Strike: remainder of line 8

Insert: "means behaving toward a child in a manner consistent with being the child's parent and performing functions that are customarily performed by a parent, including fulfilling parental responsibilities toward the child, recognizing or holding out the child as the individual's child, materially participating in the child's upbringing, and residing with the child in the same household as a regular member of that household."

36. Page 37, line 9.

Strike: line 9

Renumber: subsequent subsections

37. Page 37, line 10.

Strike: line 10

Renumber: subsequent subsections

38. Page 37, line 11.

Following: "Relative""

Strike: remainder of line 11

Insert: "means a grandparent or a descendant of a grandparent."

39. Page 51, line 27.

Strike: "47 through 63"

Insert: "40 through 56"

40. Page 51, line 30.

Strike: "47 through 63"

Insert: "40 through 56"

41. Page 52, line 25.

Strike: "47 through 63"
Insert: "40 through 56"

42. Page 52, line 28.
Strike: "47 through 56"
Insert: "40 through 56"

43. Page 52, line 29.
Strike: "47 through 63 "
Insert: "40 through 56"

44. Page 52, line 29 through line 30.
Strike: "47" on line 29 through "63" on line 30
Insert: "40 through 56"

45. Page 53, line 1.
Strike: "47 through 63"
Insert: "40 through 56"

46. Page 53, line 2.
Strike: "47 through 63"
Insert: "40 through 56"

47. Page 53, line 17.
Strike: "58"
Insert: "51"

48. Page 53, line 25.
Strike: "58"
Insert: "51"

49. Page 53, line 26.
Strike: "52 through 57"
Insert: "45 through 50"

50. Page 53, line 27.
Strike: "47 through 63"
Insert: "40 through 56"

51. Page 54, line 4.
Strike: "53 or 54"
Insert: "46 or 47"

52. Page 58, line 9.
Strike: "47 through 63"

Insert: "40 through 56"

53. Page 58, line 12.

Strike: "47 through 63"

Insert: "40 through 56"

54. Page 58, line 15.

Strike: "47 through 63"

Insert: "40 through 56"

55. Page 58, line 18.

Strike: "47 through 63"

Insert: "40 through 56"

56. Page 59, line 22.

Strike: "58(7)(b)"

Insert: "51(7)(b)"

57. Page 58, line 27.

Strike: "59"

Insert: "52"

58. Page 58, line 28.

Strike: "47 through 63"

Insert: "40 through 56"

59. Page 59, line 2.

Strike: "47 through 63"

Insert: "40 through 56"

60. Page 59, line 12 through line 15.

Strike: section 65 in its entirety

Renumber: subsequent sections

61. Page 74, line 7.

Strike: "94"

Insert: "86"

62. Page 76, line 22.

Strike: "93 through 110"

Insert: "85 through 102"

63. Page 76, line 25.

Strike: "93 through 110"

Insert: "85 through 102"

64. Page 77, line 9.

Strike: "93 through 110"

Insert: "85 through 102"

65. Page 77, line 13.

Strike: "93 through 110"

Insert: "85 through 102"

66. Page 79, line 10.

Strike: "91"

Insert: "83"

67. Page 80, line 4.

Strike: "47 through 63"

Insert: "40 through 56"

68. Page 80, line 8.

Strike: "91"

Insert: "83"

69. Page 80, line 11.

Strike: "93 through 110"

Insert: "85 through 102"

70. Page 82, line 24.

Following: "under [sections"

Strike: "93 through 110"

Insert: "85 through 102"

Following: "of [sections"

Strike: "93 through 110"

Insert: "85 through 102"

71. Page 84, line 12 through line 13.

Strike: "93 through" on line 12 through "110" on line 13

Insert: "85 through 102"

72. Page 84, line 15 through page 85, line 1.

Strike: section 111 in its entirety

ReNUMBER: subsequent sections

73. Page 85, line 4.

Strike: "55 and 56"

Insert: "48 and 49"

74. Page 85, line 30.

Strike: "29"

Insert: "22"

75. Page 86, line 1.

Strike: "29"

Insert: "22"

76. Page 86, line 2.

Strike: "40"

Insert: "33"

77. Page 86, line 3.

Strike: "40"

Insert: "33"

78. Page 86, line 4.

Strike: "45 through 63"

Insert: "38 through 56"

79. Page 86, line 5.

Strike: "45 through 63"

Insert: "38 through 56"

80. Page 86, line 6 through line 7.

Strike: subsection (6) in its entirety

81. Page 86, line 8.

Strike: "72"

Insert: "64"

82. Page 86, line 9.

Strike: "72"

Insert: "64"

83. Page 86, line 10.

Strike: "81"

Insert: "73"

84. Page 86, line 11.

Strike: "81"

Insert: "73"

85. Page 86, line 12.

Strike: "91"

Insert: "83"

86. Page 86, line 13.

Strike: "91"

Insert: "83"

87. Page 86, line 14.

Strike: "93 through 110"

Insert: "85 through 102"

88. Page 86, line 15.

Strike: "93 through 110"

Insert: "85 through 102"

89. Page 86, line 19.

Strike: line 19 in its entirety

90. Page 86, line 28.

Strike: line 28

- END -

A Bill to Update Montana's Uniform Probate Code

Sponsored by Senator Steve Fitzpatrick
Senator Mary McNally, Representative Kimberly Dudik,
Representative Bill Mercer, and Representative Joel Krautter

Outline of Major Provisions in Bill

Prepared by the Business Estates, Trusts, Tax, and Real Property Section
(the "B-E-T-T-R" Section) of the State Bar of Montana.

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Background. The Uniform Probate Code (UPC) was first proposed by the Uniform Law Commission (ULC) in 1969. Since then, it has been enacted by the Legislatures of 22 states, including Montana, North Dakota, South Dakota, and Idaho, and it has influenced the development of the law in the remaining 28 states. Montana was one of the first states to adopt the UPC and did so in 1974.

The UPC has served Montana consumers well since its 1974 enactment by the Legislature. It has greatly simplified the administration of estates and provided rules for nonprobate transfers as well. The UPC anticipates problems. Further, because of substantial section-by-section comments and because of case law from the 22 states that have adopted the UPC, the meanings of UPC provisions are easily ascertainable, which results in less litigation in Montana and therefore less expense to Montanans.

During the 50 years since the UPC was first proposed, the ULC has suggested amendments in response to changes in society, court decisions in some states, and suggestions by consumer groups and bar associations in the various states. The ULC proposed the last major set of amendments in 2010. In the opinion of the BETTR Section, these amendments make some important changes. However, the changes are evolutionary -- not revolutionary.

Montana has not comprehensively considered any amendments to the UPC since 1995 and this bill provides Montana an opportunity to do so.

The purpose of this outline is to alert the reader to the most important changes the bill would make to Montana law if enacted.

The bill affects specified sections found in Chapters 1, 2, 3, 4, and 6 of Title 72, Montana Code Annotated. Chapter 5 of Title 72, "Persons Under Disability – Guardianship and Conservatorship" is not part of this bill.

One. Inflation Adjustments in Intestacy Amounts. If a married person dies without a will ("intestate"), the UPC provides that all of that person's probate assets go to the surviving spouse, so long as the parties' children are children of both spouses. If some of the children are not, the surviving spouse still receives the bulk of the estate, which is more specifically defined in dollar amounts plus a fraction of the remainder of the estate over that dollar amount. For example, if the decedent has children who are not

descendants of the surviving spouse, the surviving spouse is entitled to the first \$100,000 of assets and ½ of the balance of the estate. The children take the balance. The bill would increase the \$100,000 figure to \$150,000 to reflect inflation. [Bill § 8]

Two. Parent barred from inheriting from a deceased child in certain circumstances. If an unmarried child has no children or grandchildren and dies without a will, the child's parents would inherit under existing Montana law. Existing law requires that the parent must have openly treated the child as the parent's child and not refused to support the child.

Section 12 of **the bill provides more exacting language**. The parent inherits, unless his/her parental rights have been terminated, or where immediately before death, there is "clear and convincing evidence" that parental rights could have been terminated under state law. Existing Montana law, MCA § 42-2-607, lists 5 specific grounds for terminating the parent-child relationship.

Three. Elective Share. The Elective Share provisions protect the surviving spouse from disinheritance. Under a partnership theory of marriage, a surviving spouse (wife or husband) in a long-term marriage (15 or more years) is entitled to 50% of the couple's collective assets. Usually, both husband and wife have contributed (directly or indirectly) to the acquisition of the assets or their preservation.

The surviving spouse's percentage of the estate is phased-in during the first 15 years of marriage. If the parties have married for only one year, the percentage is 3%. That percentage increases, at the rate of 3% per year of marriage, until after 10 years of marriage, it increases at the rate of 4% per year. As noted, if the parties have been married for 15 or more years when the first spouse dies, the surviving spouse is entitled to 50% of the parties' assets.

To a great extent, the elective share provisions of the bill are the same as existing Montana law. For example, life insurance proceeds payable to persons other than the decedent's surviving spouse, continue to be excluded from the augmented estate.

The bill would clarify some matters. For example, under existing Montana law, the parties can enter into a premarital agreement and agree to accept less than the full amount of the elective share. However, existing Montana law is silent on whether the parties can enter into an effective agreement after marriage. Section 22 of **the bill expressly authorizes post-nuptial agreements**.

In order to be enforceable, the agreement must be voluntary, it must not be the result of duress, and the surviving must have access to independent legal representation and must have received adequate financial disclosure. These concepts are explained in detail in section 22 of the bill. They are not as well defined in current Montana statutory law.

Additionally, complex elective share concepts, such as defining what is included in the calculations, have been broken down into shorter, easier-to-read sections.

Finally, a nonuniform provision of existing Montana law would be deleted if the bill is enacted. Existing Montana law excludes pension, profit-sharing and retirement benefit plan benefits from the calculation of the couple's assets. Thus, a husband could name his paramour as the beneficiary of his IRA and his surviving spouse would receive nothing from the IRA upon the husband's death. Given the significant amount of assets that currently are in many IRA accounts, the potential for major abuse is significant. The bill would eliminate this exception and subject such benefits to the surviving spouse's percentage share.

Four. Inflation Adjustments to Homestead, Exempt Property, and Family Allowances. The UPC includes three allowances that protect the decedent's surviving spouse and specified other family members from some unsecured creditors. The bill would increase the amount of the Homestead allowance from \$20,000 to \$22,500, the Family allowance from \$18,000 to \$27,500, and the Exempt Property allowance from \$10,000 to \$15,000. [Bill §§ 27, 28, and 29]

Five. Reformation of Wills to Correct Mistakes. Courts have been reluctant to correct mistakes in wills. The courts are legitimately concerned that correcting mistakes could open the floodgates of litigation which could dissipate the decedent's assets. This reluctance has been most profound when the mistake is that of omission, that is, when the will omitted a beneficiary and the would-be beneficiary seeks a distribution after the decedent's death.

The bill would allow courts to reform the terms of a will, even if unambiguous, **if clear and convincing evidence establishes doing so is necessary to implement the testator's intention.** [Bill § 38] Existing Montana Trust Law already includes a similar provision. [MCA § 72-38-415]

Six. Disclaimers. As promulgated by the ULC, the UPC now includes the Uniform Disclaimer of Property Interests Act, which has been adopted by 21 states.

A beneficiary does not have to accept a distribution from an estate and can file what is known as a "disclaimer." When a beneficiary files a disclaimer, the disclaiming beneficiary does not receive the distribution and the disclaiming beneficiary is treated as predeceasing the testator. The disclaimed property then passes to the next person in line, whether under the decedent's will or through the laws of intestacy if there was no will.

The disclaimer is a versatile and occasionally utilized post-mortem (death) estate planning tool. Disclaimers can, under specified circumstances, save a family taxes while continuing to follow the decedent's expressed intent. Disclaimers can also be used to attempt to keep the disclaimed property from the disclaimant's creditors.

Existing Montana law concerning disclaimers consists of one code section. To a great extent, that section tracks a provision of the Internal Revenue Code, with little guidance. For example, existing Montana law requires the disclaimer of a will provision to be made within 9 months of the decedent's death. Reflecting the fact that many disclaimers are not made because of tax purposes, the bill eliminates this specific time limit. The only bar to a disclaimer is the beneficiary's acceptance of the property.

Also, **the bill provides detailed rules for several types of disclaimers that have not been explicitly addressed in existing law.** For example, the bill provides detailed rules for the disclaimer of joint tenancy property, disclaimers by trustees, and disclaimers of powers held by fiduciaries.

Seven. Further Simplification of Procedures. The Bill:

- clarifies the burden and standards of proof in will contests. [Bill § 64]
- narrows the class of people entitled to a copy of the estate inventory, from "interested persons" under current law to "heirs, devisees and creditors whose claims have not been satisfied." [Bill § 70]
- clarifies that a personal representative has the same powers over assets of an estate that the owner would have, and that the personal representative has access to digital assets as provided in the Uniform Fiduciary Access to Digital Assets Act, which the Legislature adopted in 2017. [Bill § 73]

- clarifies that amounts distributed to satisfy family member's rights to the homestead, exempt property, and family allowances are true priorities, and are not available to satisfy unsecured creditor claims. [Bill § 79]

Eight. Creditor Rights concerning non-probate transfers. The UPC authorizes a number of nonprobate transfers, such as transfer-on-death brokerage accounts and deeds and pay-on-death bank accounts. A new section clarifies that unsecured creditors can reach these assets only to the same extent they can reach probate assets. Further, if the decedent did not specify which of her assets would be used first to satisfy legitimate creditor claims in her will or trust, the same section provides a priority for payment. [Bill § 83]

Nine. Uniform Real Property Transfer-on-Death Act. As promulgated by the ULC, the UPC now includes the Uniform Real Property Transfer-on-Death Act, as part of the Uniform Probate Code. Montana has previously adopted the Uniform Transfer-on-Death Security Registration Act, which permits the transfer of securities, such as stocks and bonds, without the necessity of probate. Montana has also adopted the Uniform Multiple-Party Accounts Act, which permits the transfer of bank accounts without the necessity of probate. Both of these uniform acts are part of Montana's Uniform Probate Code. The addition of the Uniform Real Property Transfer-on-Death Act to the Montana Uniform Probate Code would provide the benefits of another uniform act that permits the transfer of real property without probate. **The uniform act is more comprehensive than existing Montana law concerning the non-probate transfer of real property.** Further, if adopted, Montana landowners and courts would have the benefit of the extensive comments the Uniform Law Commission has drafted about the act and would also receive guidance from the courts of the 18 states that have already adopted the Uniform Real Property Transfer-on-Death Act. Finally, beneficiary deeds that have been signed and recorded pursuant to existing Montana law would be respected under the bill. [Bill §§ 85-102]

Summary and Comments SB 225

GENERAL PROVISIONS

- Section 1. Purpose. (Bill page 1, Summary page 1, hereafter abbreviated to "B-1, S-1")
Section 2. Severability. (B-1, S-1)
Section 3. Definitions. (B-2, S-1)
Section 4. Territorial Application. (B-6, S-1)
Section 5. Jury Trial. (B-7, S-1)
Section 6. Waiver of Notice. (B-7, S-1)
Section 7. Pleadings – when orders or notice binding one binds another -- representation. (B-7, S-1)

INTESTACY

- Section 8. Share of Spouse. (B-8, S-1)
Section 9. Requirement that heir survive decedent for 120 hours. (B-9, S-1)
Section 10. Representation. (B-9, S-2)
Section 11. Afterborn heirs. (B-10, S-2)
Section 12. Parent barred from inheriting from a deceased child in certain circumstances. (B-10, S-2)

ELECTIVE SHARE

- Section 13. Definitions. (B-17, S-2)
Section 14. Elective Share. (B-18, S-2)
Section 15. Composition of the Augmented Estate. (B-18, S-3)
Section 16. Decedent's net probate estate. (B-19, S-3)
Section 17. Decedent's nonprobate transfers to others. (B-19, S-3)
Section 18. Decedent's nonprobate transfers to surviving spouse. (B-21, S-3)
Section 19. Surviving spouse's property and nonprobate transfer to others. (B-21, S-3)
Section 20. Exclusions, valuations, and overlapping application. (B-22, S-3)
Section 21. Sources from which elective share is payable. (B-23, S-3) The bill should be amended by changing the reference in subsection (2) from "(1)(b)" to "(1)(c)".
Section 22. Effect of premarital or marital agreement right to elect and of other rights. (B-24, S-3)
Section 23. Right of election personal to surviving spouse – incapacitated surviving spouse. (B-25, S-4)
Section 24. Proceeding for elective share – time limit. (B-26, S-4)
Section 25. Protection of payors and other third parties. (B-27, S-4)
Section 26. Personal liability of recipients. (B-28, S-4)

EXEMPT PROPERTY AND ALLOWANCES

- Section 27. Homestead allowance. (B-29, S-4)
Section 28. Exempt Property. (B-29, S-4)
Section 29. Source, determination, and documentation. (B-30, S-4)

RULES OF CONSTRUCTION

- Section 30. Antilapse -- deceased devisee – class gifts. (B-30, S-4)
Section 31. Nonademption of specific devises – unpaid proceeds of sale, condemnation, or insurance – sale by conservator or agent. (B-33, S-4)
Section 32. Requirement of survival by 120 hours. (B-34, S-4)
Section 33. The bill should be amended to delete this section.

Section 34. Life insurance – retirement plan – account with POD designation – transfer-of-death registration – deceased beneficiary. (B-38, S-5)

Section 35. Survivorship with respect to future interests under terms of trust – substitute takers. (B-42, S-5)

GENERAL PROVISIONS

Section 36. Effect of homicide on intestate succession, wills, trusts, joint assets, life insurance, and beneficiary designations. (B-45, S-5)

Section 37. Revocation of probate and nonprobate transfers by divorce – no revocation by other changes of circumstances. (B-48, S-5)

Section 38. Reformation to correct mistakes. (B-51, S-5)

Section 39. Modification to achieve transferor's tax objectives. (B-52, S-5)

DISCLAIMERS

Section 40. Short title. (B-52, S-6)

Section 41. Definitions. (B-52, S-6)

Section 42. Scope. (B-53, S-6)

Section 43. Disclaimer provisions supplemented by other law. (B-53, S-6)

Section 44. Power to disclaim – general requirements – when revocable. (B-53, S-6)

Section 45. Disclaimer of interest in property. (B-54, S-6)

Section 46. Disclaimer of rights of survivorship in jointly held property. (B-55, S-6)

Section 47. Disclaimer of interest by trustee. (B-55, S-7)

Section 48. Disclaimer of power of appointment or other power not held in fiduciary capacity. (B-55, S-7)

Section 49. Disclaimer by appointee, object, or taker in default of exercise of power of appointment. (B-56, S-7)

Section 50. Disclaimer of power held in fiduciary capacity. (B-56, S-7)

Section 51. Delivery or filing. (B-56, S-7)

Section 52. When disclaimer barred or limited. (B-58, S-7)

Section 53. Tax qualified disclaimer. (B-58, S-7)

Section 54. Recording of disclaimer. (B-59, S-7)

Section 55. Application to existing relationships. (B-59, S-7)

Section 56. Relation to electronic signatures in global and national commerce act. (B-59, S-8)

PROBATE AND ADMINISTRATION GENERALLY

Section 57. Necessity of order of probate of a will. (B-59, S-8)

Section 58. Venue for estate proceedings. (B-60, S-8)

Section 59. Time limit on probate, testacy, and appointment proceedings – exceptions. (B-60, S-8)

Section 60. Effect of approval of agreements involving trusts, inalienable interests, or interests of third persons. (B-61, S-8)

Section 61. Applications to be verified. (B-62, S-8)

Section 62. Required contents of application. (B-62, S-8)

Section 63. Probate and appointment under will – additional information required. (B-62, S-8)

Section 64. Formal testacy proceedings – contested cases. (B-63, S-8)

PERSONAL REPRESENTATIVES

Section 65. Supervised administration – nature and purpose – presumptive entitlement. (B-64, S-8)

Section 66. Powers of personal representative in supervised administration. (B-64, S-9)

Section 67. Priorities for appointment. (B-65, S-9)

Section 68. Renunciation – nomination of other – two or more persons sharing priority. (B-65, S-9)

Section 69. Demand for bond by interested person. (B-65, S-9)

- Section 70. Inventory – appraisal. (B-66, S-9)
Section 71. No surcharge for authorized acts generally – limitation. (B-66, S-9)
Section 72. Transactions authorized for personal representative. (B-67, S-9)
Section 73. Powers of personal representatives in general. (B-70, S-9)
Section 74. Persons dealing with personal representative – protection. (B-70, S-9)
Section 75. Compensation of personal representative. (B-70, S-9)

CREDITORS AND CLAIMS

- Section 76. Nonclaim – limitations on presentation of claims – exceptions. (B-71, S-10)
Section 77. Compromise of claims. (B-72, S-10)
Section 78. Distribution to person under disability. (B-72, S-10)
Section 79. Liability of distributees to claimants. (B-73, S-10)
Section 80. Limitation on actions against distributees. (B-73, S-10)

FOREIGN PERSONAL REPRESENTATIVE

- Section 81. Service on foreign personal representative. (B-74, S-11)

NONPROBATE TRANSFERS

- Section 82. Nonprobate transfers on death. (B-74, S-11)
Section 83. Liability of nonprobate transferees for creditor claims and statutory allowances. (B-75, S-11)
Section 84. **The bill should be amended to delete this section.**
Section 85. Short title: Uniform Real Property Transfer on Death Act. (B-77, S-11)
Section 86. Definitions. (B-77, S-11)
Section 87. Applicability. (B-77, S-11)
Section 88. Nonexclusivity. (B-77, S-12)
Section 89. Transfer on death deed authorized. (B-78, S-12)
Section 90. Transfer on death deed revocable. (B-78, S-12)
Section 91. Transfer on death deed nontestamentary. (B-78, S-12)
Section 92. Capacity of transferor. (B-78, S-12)
Section 93. Requirements. (B-78, S-12)
Section 94. Notice, delivery, acceptance, consideration not required. (B-78, S-12)
Section 95. Revocation by instrument authorized – revocation by act not permitted. (B-78, S-12)
Section 96. Effect of transfer on death deed during transferor's life. (B-79, S-12)
Section 97. Effect of transfer on death deed at transferor's death. (B-79, S-12)
Section 98. Disclaimer. (B-80, S-12)
Section 99. Liability for creditor claims and statutory allowances. (B-80, S-13)
Section 100. Optional form of transfer on death deed. (B-80, S-13)
Section 101. Optional form of revocation. (B-83, S-13)
Section 102. Prior executed and recorded beneficiary deed. (B-84, S-13)

MISCALLEANOUS

- Section 103. Disclaimer. (B-85, S-13)
Section 104. Compensation of public administrator. (B-85, S-13)
Section 105. Directions to the code commissioner. (B-86, S-13)
Section 106. Codification instruction. (B-86, S-14)
Section 107. Repealer. (B-87, S-14) **This section should be modified by deleting the reference to Mont. Code Ann. § 72-2-715 in light of the Senate amendments to the original bill.**

Summary and Comments SB 225

GENERAL PROVISIONS

Section 1. Purpose. This new section would assist courts in understanding the primary purposes of the UPC and further would assist the courts in construing the Uniform Probate Code (UPC).

Section 2. Severability. This section is a standard provision designed to protect the code in the event any part of it is found to be invalid.

Section 3. Definitions. Subsections (43) and (46) were added to the definitions to permit electronic communications to constitute a “record” of a matter and to permit electronic signatures.

Section 4. Territorial Application. Subsection (4) has been added to clarify that the UPC includes provisions dealing with survivorship (such as joint tenancy with rights of survivorship).

Section 5. Jury Trial. This amendment would clarify statutory language by indicating that the right to a jury applies to any proceeding in which a controverted question of fact arises and the party has a constitutional right to trial by jury.

Section 6. Waiver of Notice. The UPC requires fiduciaries (such as personal representatives) and other individuals to notify specified parties of certain matters that may affect those parties. However, to save time and money, parties may waive these notice requirements. The proposed amendment precludes a waiver by a person who is a respondent in a guardianship proceeding. A person who would be directly affected by a guardianship must know about the proceeding.

Section 7. Pleadings – when orders or notice binding one binds another -- representation. Specified orders binding one person also bind another person if there is no conflict of interest. The proposed amendment would clarify that orders binding the holder of a general testamentary power may bind others to the extent their interests are subject to the power.

INTESTACY

Section 8. Share of Spouse. If a married person dies without a will (“intestate”), existing Montana law provides that all of that person’s probate assets go to the surviving spouse, so long as the parties’ children are children of both spouses. If some of the children are not, the surviving spouse still receives the bulk of the estate, which is more specifically defined in dollar amounts plus a fraction of the remainder of the estate over that dollar amount. The proposed amendments would increase those dollar amounts to reflect inflation.

Section 9. Requirement that heir survive decedent for 120 hours. This section avoids multiple administrations by requiring heirs to survive decedents by 120 hours. For example, husband and wife are involved in an automobile accident. Husband dies instantly at the crash scene and the wife dies one day later at a hospital. Rather than having husband’s estate be distributed to wife’s estate and then having those same assets be distributed as part of wife’s estate to their children, husband’s estate would be directly distributed to the children in a one-step process. The amendment clarifies this result by indicating that the wife (in this case) is “deemed” (rather than “considered”) to have predeceased her husband.

Section 10. Representation. The concept of representation concerns who takes in the place of a deceased person, or a person who is “deemed” to be deceased. The change from the term “considered” to the term “deemed” makes this representation provision consistent with the language in section 9.

Section 11. Afterborn heirs. Individuals in gestation have long been treated as living if they survive 120 hours or more after birth. The amendment requires “clear and convincing” evidence of surviving the 120-hour period.

Section 12. Parent barred from inheriting from a deceased child in certain circumstances. If an unmarried child has no children or grandchildren and dies without a will, the child’s parents would inherit under existing Montana law. Existing law requires that the parent must have openly treated the child as the parent’s child and not refused to support the child.

This new section provides more exacting language. The parent inherits, unless his/her parental rights have been terminated, or where immediately before death, there is “clear and convincing evidence” that parental rights could have been terminated under state law. Existing Montana law, Mont. Code Ann. § 42-2-607, lists 5 specific grounds for terminating the parent-child relationship.

ELECTIVE SHARE

Sections 13-26. Elective Share Provisions Generally. The elective share provisions protect the surviving spouse from disinheritance. Under a partnership theory of marriage, a surviving spouse (wife or husband) in a long-term marriage (15 or more years) is entitled to 50% of the couple’s collective assets. Usually, both husband and wife have contributed (directly or indirectly) to the acquisition of the assets or their preservation.

The surviving spouse’s percentage of the estate is phased in during the first 15 years of marriage. If the parties have married for only one year, the percentage is 3%. That percentage increases, at the rate of 3% per year of marriage, until after 10 years of marriage, it increases at the rate of 4% per year.

To a great extent, the substantive elective share provisions of the bill are the same as existing Montana law. However, many of the provisions have been reorganized into easier-to-understand shorter sections.

A nonuniform provision of existing Montana law would be deleted if the bill is enacted. Existing Montana law excludes pension, profit-sharing and retirement benefit plan benefits from the calculation of the couple’s assets. Thus, a husband could name his paramour as the beneficiary of his IRA and his surviving spouse would receive nothing from the IRA upon the husband’s death. Given the significant amount of assets that currently are in many IRA accounts, the potential for major abuse is significant. The bill would eliminate this exception and subject such benefits to the surviving spouse’s elective share.

Because of this change and the substantial reorganization into easier-to-understand shorter sections, Mont. Code Ann. §§ 72-2-221, 72-2-222, 72-2-224, 72-2-226, and 72-2-227 would be repealed.

Section 13. Definitions. This new section provides the definitions for the elective share sections.

Section 14. Elective Share. This new section grants the surviving spouse the right to an elective share.

Section 15. Composition of the Augmented Estate. Subsection (1) of this new section lists the four components of the “augmented estate” (the couple’s collective assets). Subsection (2) sets forth the elective share percentages which depend on the length of the marriage.

Section 16. Decedent’s net probate estate. This new section is the first of four components of the augmented estate and consists of the probate estate less funeral and administrative expenses, enforceable claims, and exempt property and allowances.

Section 17. Decedent’s nonprobate transfers to others. This new section is the second of four components of the augmented estate. It consists of specified, nonprobate assets transferred from the decedent spouse to someone other than the surviving spouse.

Section 18. Decedent’s nonprobate transfers to surviving spouse. This new section is the third of four components of the augmented estate and consists of specified, nonprobate assets transferred from the decedent spouse to the surviving spouse.

Section 19. Surviving spouse’s property and nonprobate transfer to others. This new section is the final component of the augmented estate and consists of property owned by the surviving spouse at the decedent spouse’s death. Additionally, it consists of specified, nonprobate assets transferred from the surviving spouse to a third party. Further, this section includes specified transfers from the surviving spouse to third parties made within 2 years of the decedent spouse’s death.

Section 20. Exclusions, valuations, and overlapping application. This new section lists a number of assets not included in the augmented estate. Consistent with existing Montana law, life insurance payable to persons other than the decedent’s surviving spouse, is excluded. The section also provides rules for valuing assets and provides that if the same asset is included in the augmented estate more than once because of different code provisions, the asset is counted only once. If the different code provisions give rise to different values for the same asset, the highest value applies.

Section 21. Sources from which elective share is payable. This new section provides an order for satisfying the elective share. In general terms, the following order applies:

- First, assets the surviving spouse received from the probate estate and the marital portion of assets owned by the surviving spouse;
- Second (if there is an elective share deficiency), assets in the probate estate that go to third parties and nonprobate transfers to third parties; and
- Third (if there still is a deficiency), assets included in the augmented estate, which assets were transferred by the decedent spouse to third parties within 2 years of death.

The bill should be amended by changing the reference in subsection (2) from “(1)(b)” to “(1)(c)”.

Section 22. Effect of premarital or marital agreement right to elect and of other rights. Under existing Montana law, the parties can enter into a premarital agreement and agree to accept less than the full amount of the elective share. However, existing Montana law is silent on whether the parties can enter into an effective agreement after marriage. This new section expressly authorizes post-nuptial agreements.

Additionally, in order for agreements to be enforceable, the new section requires that the agreements be voluntary, and not be the result of duress. The surviving spouse must have access to independent

legal representation and must have received adequate financial disclosure. These concepts are not defined in current Montana statutory law.

Section 23. Right of election personal to surviving spouse – incapacitated surviving spouse.

Section 24. Proceeding for elective share – time limit. **Section 25.** Protection of payors and other third parties. **Section 26.** Personal liability of recipients. These sections would be amended to reflect new section numbers. Substantive law would not be altered.

EXEMPT PROPERTY AND ALLOWANCES

Section 27. Homestead allowance. **Section 28.** Exempt Property. These two sections protect the family from the decedent's unsecured creditors up to specified dollar limits. These sections would be amended to increase those limits to reflect inflation. The homestead allowance would be increased from \$20,000 to \$22,500, and the exempt property allowance from \$10,000 to \$15,000.

Section 29. Source, determination, and documentation. This section would amend Mont. Code Ann. § 72-2-415 by increasing the \$18,000 limit to a \$27,500 limit on the personal representative's authority to determine the family allowance. The family allowance is another protection from the decedent's unsecured creditors. Again, this amendment is an inflation adjustment.

RULES OF CONSTRUCTION

Section 30. Antilapse -- deceased devisee – class gifts. Gifts in a will are called "devises." A devise in a will to a beneficiary who predeceases the testator is said to "lapse." Neither the beneficiary (devisee) nor any of his/her family receive the devise. Montana's existing antilapse statute provides some precisely-worded exceptions to this general rule. For example, if the deceased devisee is a descendant of the testator's grandparent, the devise does not lapse. Rather, the deceased devisee's descendants take the devise. This section would clarify several aspects of Mont. Code Ann. § 72-2-613.

Section 31. Nonademption of specific devises – unpaid proceeds of sale, condemnation, or insurance – sale by conservator or agent. Devises may be classified in a number of ways. A "general" devise could come from any of the testator's assets. For example, "I devise \$100 to each of my cousins." The \$100 devises could come from any of the estate's assets. A "specific" devise is the devise of a uniquely identifiable item. For example, "I devise my 1969 Buick Grand Sport to my brother." If the testator sells or otherwise disposes of that item prior to the testator's death, the question could arise whether the will's designated beneficiary ("devisee") of that item would receive something else as a replacement. This section provides that the devisee would not, unless it is established that such would be inconsistent with the testator's manifested plan of distribution or that at the time the will was made, or the date the testator sold that item, the testator did not intend that result. Thus, the general rule is that when a testator makes a specific devise and later disposes of the devised asset, the testator knows that the devise is no longer effective. This section would modify Mont. Code Ann. § 72-2-616 to make it consistent with the prevailing rule in other states.

Section 32. Requirement of survival by 120 hours. Mont. Code Ann. § 72-2-712 imposes the 120-hour survival requirement applicable to intestacy (see Section 9 of the bill) on wills as a rule of construction. As a result, there will be fewer successive administration of the same assets. Also, the bill clarifies this rule of construction. For example, like Section 9 of the bill, the term "deemed" replaces the word "considered."

Section 33. The bill should be amended to delete this section. Senate changes to the intestate succession provisions of the original bill require that Section 33 be deleted. Instead, existing Mont. Code Ann. § 72-2-715 should be retained because it is consistent with the intestacy provisions in this amended bill.

Section 34. Life insurance – retirement plan – account with POD designation – transfer-of-death registration – deceased beneficiary and **Section 35.** Survivorship with respect to future interests under terms of trust – substitute takers. Like Section 30 dealing with antilapse in an estate, these sections would provide similar rules to life insurance, retirement plans, pay-on-death accounts with financial institutions, transfer-on-death security registration, and future interests in a trust. Also, like Section 30, Sections 34 and 35 would clarify several aspects of existing Montana law.

GENERAL PROVISIONS

Section 36. Effect of homicide on intestate succession, wills, trusts, joint assets, life insurance, and beneficiary designations. Existing Montana law revokes any disposition of these assets to an heir (devisee, beneficiary, or surviving joint tenant) if that heir (devisee, beneficiary, or surviving joint tenant) kills the decedent. Existing Montana law, Mont. Code Ann. § 72-2-813(9)(b), purports to preclude an identified federal law from preempting state law. This amendment would eliminate this unenforceable provision.

Section 37. Revocation of probate and nonprobate transfers by divorce – no revocation by other changes of circumstances. Existing Montana law provides a rule of construction, which revokes a disposition of assets to a former spouse when the divorce or annulment occurs after the will, or the nonprobate transfer document, was signed. Existing Montana law, Mont. Code Ann. § 72-2-814(8)(b), purports to preclude an identified federal law from preempting state law. This amendment would eliminate this unenforceable provision.

Section 38. Reformation to correct mistakes. Courts have been reluctant to correct mistakes in wills. The courts are legitimately concerned that correcting mistakes would encourage litigation, which could dissipate the decedent's assets. This reluctance has been most profound when the mistake is that of omission, that is, the will omitted a beneficiary and the would-be beneficiary seeks a distribution after the decedent's death.

This new section would allow courts to reform the terms of a will, even if unambiguous, if clear and convincing evidence establishes doing so is necessary to implement the testator's intention. Mont. Code Ann. § 72-38-415 already applies a similar provision to trusts.

Section 39. Modification to achieve transferor's tax objectives. This new section would permit a court to modify the terms of a will to achieve the testator's probable tax objectives.

DISCLAIMERS

Sections 40-56. Disclaimers Generally. A beneficiary does not have to accept a distribution from an estate and can file what is known as a "disclaimer." When a beneficiary files a disclaimer, the disclaiming beneficiary does not receive the distribution and the disclaiming beneficiary is treated as predeceasing the testator. The disclaimed property then passes to the next person in line, whether under the decedent's will or through the laws of intestacy if there was no will.

The disclaimer is a versatile and occasionally utilized post-mortem (death) estate planning tool. Disclaimers can, under specified circumstances, save a family taxes while continuing to follow the decedent's expressed intent. Disclaimers can also be used to attempt to keep the disclaimed property from the disclaimant's creditors.

Existing Montana law concerning disclaimers consists of one code section, namely Mont. Code Ann. § 72-2-811. To a great extent, that section tracks a provision of the Internal Revenue Code, with little guidance. For example, existing Montana law requires the disclaimer of a will provision to be made within 9 months of the decedent's death. Reflecting the fact that many disclaimers are not made because of tax purposes, the bill eliminates this specific time limit. The only bar to a disclaimer is the beneficiary's acceptance of the property.

Sections 40-56 comprise the "Uniform Disclaimer of Property Interest Act," a comprehensive act that deals with all aspects of disclaimers. This act has been adopted by 21 states and the District of Columbia. The Uniform Law Commission has recommended the act's incorporation into the UPC.

Sections 40-56 would replace Mont. Code Ann. § 72-2-811, which would be repealed.

Section 40. Short title. This new section indicates that the title of the act is the "Uniform Disclaimer of Property Interest Act."

Section 41. Definitions. This new section provides definitions for the act.

Section 42. Scope. The act applies to any interest in property.

Section 43. Disclaimer provisions supplemented by other law. Other areas of law supplement the act. For example, Section 47 permits a trustee to disclaim, yet the disclaiming trustee must still adhere to all applicable fiduciary duties found in trust law.

Section 44. Power to disclaim – general requirements – when revocable. This new section would give persons and fiduciaries broad powers to disclaim interests in, and powers over, property. Subsection (3) sets forth the formal requirements of a disclaimer. The disclaimer must be in writing or in a "record" (as defined in the act) and must be signed. A person making a disclaimer, may disclaim his or her entire interest in the disclaimed property, or any fraction or percentage of the property. The disclaimer becomes irrevocable when delivered or filed in accordance with Section 51.

Section 45. Disclaimer of interest in property. This new section makes a disclaimer effective at the time the instrument creating the interest become irrevocable. A will and a revocable trust become irrevocable upon the testator's death or the trust creator's (settlor's) death. The disclaimed assets pass as directed in instrument creating the interest, usually the will or trust. If that instrument does not provide any direction, the section sets down rules to determine who will be recipient of the disclaimed property.

Section 46. Disclaimer of rights of survivorship in jointly held property. In the context of some joint tenancies, a joint tenant owns a fraction of the property, the numerator of which is 1 and the denominator of which equals that number of joint tenants just prior to death. In the context of other joint tenancies, a joint tenant owns what the tenant contributed to the property. A surviving joint

tenant cannot disclaim something the surviving joint tenant already owns. A surviving joint tenant can disclaim the interest coming from a decedent joint tenant.

Section 47. Disclaimer of interest by trustee. Subject to the trustee's fiduciary duties, a trustee may disclaim what would have become trust property. The instrument under which the right to receive the property was created may govern the disposition of the property in the event of a disclaimer by providing for a disposition when the trust does not exist. When the instrument does not include such a provision, the property reverts back to the donor.

Section 48. Disclaimer of power of appointment or other power not held in fiduciary capacity. This new section provides rules concerning disclaimers by holders of powers of appointment, including the time when such disclaimers take effect.

Section 49. Disclaimer by appointee, object, or taker in default of exercise of power of appointment. This new section provides rules concerning disclaimers by appointees and takers in default of powers of appointment, including the time when such disclaimers take effect.

Section 50. Disclaimer of power held in fiduciary capacity. This section covers disclaimers by trustees, personal representatives, agents acting under powers of attorney, and other fiduciaries. The rules of the section indicate the time when disclaimers by such fiduciaries take effect.

Section 51. Delivery or filing. Existing law requires that an effective disclaimer must be made within 9 months of the event giving rise to the right to disclaim. Thus, an effective disclaimer of a provision in a will must be made within 9 months of the testator's death. The 9-month rule corresponds with provisions in the Internal Revenue Code.

This new section rejects a time requirement for making a disclaimer. Many disclaimers are made for non-tax reasons. So long as the disclaimant has not waived the right to disclaim and so long as the disclaimant is not barred from disclaiming the property under Section 52, a disclaimer may be made.

Section 52. When disclaimer barred or limited. A disclaimer is barred if the would-be disclaimant accepted the interest sought to be disclaimed, voluntarily assigned or conveyed the interest, or if there has been a judicial sale of the property.

Also, this section describes where the written disclaimer must be delivered or filed, which depends upon the type of interest being disclaimed.

Section 53. Tax qualified disclaimer. If a disclaimer meets the qualifications of the Internal Revenue Code, the disclaimer is effective under Sections 40-56.

Section 54. Recording of disclaimer. This new section permits recording of a disclaimer of an interest in real property. In order to establish the chain of title to real property, disclaimants will likely record the disclaimer.

Section 55. Application to existing relationships. If a disclaimer is barred by the running of a time period of existing law, it will continued to be barred under this section.

Section 56. Relation to electronic signatures in global and national commerce act. This section consists of standard language in uniform acts which permits states to preempt application of the federal Electronic Signatures in Global and National Commerce Act.

PROBATE AND ADMINISTRATION GENERALLY

Section 57. Necessity of order of probate of a will. Some individuals understand the term “probate” to include the entire administration of an estate, from the opening petition to the closing order. Mont. Code Ann. § 72-3-102 provides that an order declaring a will to be valid is necessary to prove title. That order is considered “probate.” This section would make the title of Mont. Code Ann. § 72-3-102 consistent with the substance of that section.

Section 58. Venue for estate proceedings. Existing Montana law, namely, Mont. Code Ann. § 72-3-112, provides venue rules for estate proceedings. This section would add subsection (4). A debt of a nondomiciliary is located where the debtor resides, or if the debtor is not an individual, it is located where the principal office of the debtor is located. Section 66 replaces Mont. Code Ann. § 72-3-113, which would be repealed.

Section 59. Time limit on probate, testacy, and appointment proceedings – exceptions. This section makes no substantive change to Mont. Code Ann. § 72-3-122. A phrase “after the time period” is replaced with “thereafter” in subsection (d).

Section 60. Effect of approval of agreements involving trusts, inalienable interests, or interests of third persons. This section would make the title of Mont. Code Ann. § 72-3-131 consistent with the title to its corresponding section in the UPC. There is no change to substantive law.

Section 61. Applications to be verified. This section would amend Mont. Code Ann. § 72-3-201 by requiring verification of petitions for informal probate and informal administration. The amendment is consistent with the corresponding section in the UPC.

Section 62. Required contents of application. This section would amend Mont. Code Ann. § 72-3-202 by adding a requirement that a petition for informal probate or informal administration include a statement that the petition was made within the time limits proscribed by Mont. Code Ann. § 72-3-122. The amendment is consistent with the corresponding section in the UPC.

Section 63. Probate and appointment under will – additional information required. This section would amend Mont. Code Ann. § 72-3-203 to accommodate the change included in Section 62 above.

Section 64. Formal testacy proceedings – contested cases. This new section clarifies the burden and standards of proof in will contests. Section 64 would replace Mont. Code Ann. § 72-3-309, which would be repealed.

PERSONAL REPRESENTATIVES

Section 65. Supervised administration – nature and purpose – presumptive entitlement. This section would amend Mont. Code Ann. § 72-3-401. A supervised administration requires a court order before the personal representative may make distributions to beneficiaries. Supervised administrations incur additional costs and are rarely utilized. This amendment, consistent with the UPC, would set forth additional responsibilities of a personal representative in a supervised administration and would eliminate a provision granting a devisee a presumptive entitlement to a supervised administration.

Section 66. Powers of personal representative in supervised administration. This section would amend Mont. Code Ann. § 72-3-404 to accommodate the change included in Section 65 above.

Section 67. Priorities for appointment. This section would amend Mont. Code Ann. § 72-3-502, which lists individuals who would have priority to be appointed as personal representative. If a decedent dies without a will and is not survived by a spouse, this amendment would give next priority to the parent of an adult decedent who was survived by minor children.

Section 68. Renunciation – nomination of other – two or more persons sharing priority. This section would modify Mont. Code Ann. § 72-3-504, which currently refers to Mont. Code Ann. § 72-3-502(6). The bill would modify this cross reference by changing subsection (6) to (7) in order to accommodate the change made in Section 67 above.

Section 69. Demand for bond by interested person. This section would amend Mont. Code Ann. § 72-3-514, which permits a person or creditor having an interest or claim in excess of \$1,000, to demand that the personal representative obtain a bond. The amendment would make an inflationary adjustment and increase the \$1,000 minimum amount to \$5,000.

Section 70. Inventory – appraisal. This section would amend Mont. Code Ann. § 72-3-607. The amendment narrows the class of people entitled to receive a copy of the estate inventory. Rather than “interested persons” as provided under existing law, “heirs, devisees and creditors whose claims have not been satisfied” would be entitled to receive a copy.

Section 71. No surcharge for authorized acts generally – limitation. This section would clarify Mont. Code Ann. § 72-3-611 by indicating that the personal representative owes duties to claimants whose claims have been allowed.

Section 72. Transactions authorized for personal representative. This section would amend Mont. Code Ann. § 72-3-613. The amendment would eliminate requirements that the personal representative must first obtain the consent of the heirs or the court before abandoning worthless property or negotiating settlement of claims against the estate. Such requirements can make administration cumbersome and potentially costly.

Section 73. Powers of personal representatives in general. This new section would clarify that a personal representative has the same powers over assets of an estate that the owner would have, and that the personal representative has access to digital assets as provided in the Uniform Fiduciary Access to Digital Assets Act, which the Legislature adopted in 2017.

Section 74. Persons dealing with personal representative – protection. This section would clarify Mont. Code Ann. § 72-3-618 by referencing Mont. Code Ann. § 72-3-404 in its entirety.

Section 75. Compensation of personal representative. Mont. Code Ann. § 72-3-631 includes a nonuniform provision, which imposes a formula limiting a personal representative’s compensation to “3% of the first \$40,000 of value of the estate . . . and 2% of the value of estate assets in excess of \$40,000...” The bill would make Montana law consistent with the UPC as promulgated by the Uniform Law Commission and simply provides that “a personal representative is entitled to reasonable compensation for services.”

The existing Montana formula has occasionally led to unattended consequences. On one hand, the formula has prompted some personal representatives of large estates to argue that a 2% change is reasonable in circumstances when, in fact, such a charge is unreasonably high. On the other hand, the formula has discouraged other individuals from agreeing to serve as personal representatives of small estates. The bill would eliminate these unintended consequences by eliminating the formula and requiring that compensation be reasonable in all estates.

Existing Montana law authorizes the personal representative to employ persons, including attorneys, auditors, and investment advisors. [Mont. Code Ann. § 72-3-613(21)] Further, existing Montana law permits an estate beneficiary, or other interested person, to challenge the reasonableness of compensation paid to persons employed by the personal representative. Mont. Code Ann. § 72-3-634. The bill would repeal Mont. Code Ann. § 72-3-633 which limits attorney fees to 1 ½ times the amount allowed for personal representatives. In light of the change in personal representative fees to a reasonable standard, it does not make sense that attorneys could be paid 1 ½ times a reasonable fee. Attorney fees must be reasonable.

The Montana Supreme Court has established a seven-part test applicable to all civil matters by which the reasonableness of an attorney fee is determined. For example, the court evaluates the requirements of the case, such as technical skills, the time required, and the complexity of the issues.

CREDITORS AND CLAIMS

Section 76. Nonclaim – limitations on presentation of claims – exceptions. This section would amend Mont. Code Ann. § 72-3-803. The statute imposes time limits on when creditors must make their claims after the death of an alleged debtor. The amendment makes it clear that these time limits apply to nonprobate transfers as well as probate transfers.

Section 77. Compromise of claims. This section would amend Mont. Code Ann. § 72-3-815. The amendment would eliminate requirements that the personal representative must first obtain the consent of the heirs or the court before compromising claims against the estate. Such a requirement can make administration cumbersome and potentially costly.

Section 78. Distribution to person under disability. This section would amend Mont. Code Ann. § 72-3-917, which gives options to a personal representative when a disabled person is a beneficiary. If the property to be received does not exceed \$10,000 in value, the personal representative may make the distribution to the disabled person's spouse or other close relatives. The amendment would make an inflationary adjustment and increase the \$10,000 limit to \$50,000.

Section 79. Liability of distributees to claimants. This section would amend Mont. Code Ann. § 72-3-1012. The amendment would clarify that amounts distributed to satisfy family member's rights to the homestead, exempt property, and family allowances are true priorities, and are not available to satisfy unsecured creditor claims.

Section 80. Limitation on actions against distributees. This section would amend Mont. Code Ann. § 72-3-1013. If a personal representative makes an improper distribution, one can seek recovery from the improper distributee. Proceedings must be made before the later of 3 years after the decedent's death or 1 year after the time of distribution. The amendment would affect claims by the decedent's creditors

and limit their claims to 1 year after the decedent's death. That 1-year creditor limitation is consistent with other UPC provisions, namely, Mont. Code Ann. § 72-3-803.

FOREIGN PERSONAL REPRESENTATIVE

Section 81. Service on foreign personal representative. This section would amend Mont. Code Ann. § 72-4-403. The amendment would permit service of process on a personal representative of an out-of-state probate by registered mail.

NONPROBATE TRANSFERS

Section 82. Nonprobate transfers on death. This section would amend Mont. Code Ann. § 72-6-111. The amendment would change cross references to reflect the Uniform Real Property Transfer on Death Act, which is found in Sections 85 to 102 of the bill.

Section 83. Liability of nonprobate transferees for creditor claims and statutory allowances. Existing Montana law authorizes a number of nonprobate transfers, such as transfer-on-death brokerage accounts and pay-on-death bank accounts. This new section would clarify that unsecured creditors can reach these assets only to the same extent they can reach probate assets. Further, if the decedent did not specify which of the decedent's assets would be used first to satisfy legitimate creditor claims in a will or trust, this section provides a priority for payment.

Section 84. The bill should be amended to delete this section. Some Montana financial institutions have advised us that the section could require the modification of all their account forms.

Sections 85-102. Uniform Real Property Transfer on Death Act, generally. As promulgated by the Uniform Law Commission, the UPC now includes the Uniform Real Property Transfer-on-Death Act, as part of the Uniform Probate Code. Montana has previously adopted the Uniform Transfer-on-Death Security Registration Act, which permits the transfer of securities, such as stocks and bonds, without the necessity of probate. Montana has also adopted the Uniform Multiple-Party Accounts Act, which permits the transfer of bank accounts without the necessity of probate. Both of these uniform acts are part of Montana's Uniform Probate Code. The addition of the Uniform Real Property Transfer-on-Death Act to the Montana Uniform Probate Code would provide the benefits of another uniform act that permits the transfer of real property without probate.

The uniform act is more comprehensive than existing Montana law concerning the non-probate transfer of real property. Further, if adopted, Montana landowners and courts would have the benefit of the extensive comments the Uniform Law Commission has drafted about the act and would also receive guidance from the courts of the 18 states that have already adopted the Uniform Real Property Transfer-on-Death Act.

Sections 85-102 would replace Mont. Code Ann. § 72-6-121, which would be repealed.

Section 85. Short title. This new section indicates that the title of the act is the "Uniform Real Property Transfer-on-Death Act."

Section 86. Definitions. This new section provides definitions for the act.

Section 87. Applicability. This new section provides that the act applies to a transfer on death deed made before, on, or after the effective date of the act.

Section 88. Nonexclusivity. This new section provides that the act does not affect any method of transferring property otherwise permitted under state law.

Section 89. Transfer on death deed authorized. This new section authorizes a transfer on death deed and makes it clear that the transfer is not an inter vivos transfer. The transfer occurs at the transferor's death.

Section 90. Transfer on death deed revocable. This new section provides that the transferor retains the power to revoke the deed.

Section 91. Transfer on death deed nontestamentary. This new section indicates that the deed does not have to be executed in compliance with the formalities for wills, nor does the deed have to be probated.

Section 92. Capacity of transferor. This new section provides that the capacity required to make or revoke a transfer on death deed, which is a revocable will substitute, is the same as the capacity required to make a will.

Section 93. Requirements. Subsection (1) of this new section requires that a transfer on death deed contain the same essential elements and formalities, other than a present intention to convey, as are required for a properly recordable inter vivos deed under state law. Subsection (2) requires the deed to state that the transfer will occur on death. Subsection (3) requires the deed to be recorded.

Section 94. Notice, delivery, acceptance, consideration not required. This new section makes it clear that a transfer on death deed is effective without notice, or delivery to, or acceptance by, the beneficiary during the transferor's lifetime. Further, no consideration is required.

Section 95. Revocation by instrument authorized – revocation by act not permitted. This new section concerns revocation of the transfer on death deed by instrument and revocation by act. Subsection (1) sets forth the exclusive means of revoking a transfer on death deed. A subsequent instrument revoking the TOD deed must be recorded prior to the revoking transferor's death. Subsection (3) indicates that after a transfer on death deed is recorded, it may not be revoked by a revocatory act on the deed.

Section 96. Effect of transfer on death deed during transferor's life. This new section provides that a transfer on death deed does not operate until the transferor's death. The transfer occurs at the transferor's death, not before. Thus, during the transferor's life, the transferor's creditors are not affected and the beneficiary's creditors have no claim to the property.

Section 97. Effect of transfer on death deed at transferor's death. Subsection (1) of this new section states 4 default rules. Subsection (2) concerns the effect of transactions during the transferor's life. Subsection (3) provides that the survivorship right of a joint owner takes precedence over a transfer on death deed. Subsection (4) states that a transfer on death deed transfers the property without covenant or warranty of title.

Section 98. Disclaimer. This new section provides that a beneficiary of a transfer on death deed may refuse to accept the property through the disclaimer process.

Section 99. Liability for creditor claims and statutory allowances. This new section provides that the beneficiary of a transfer of death deed is liable for legitimate claims against the transferor's estate, including the statutory allowances for family members. Section 99 would replace Mont. Code Ann. § 72-6-123, which would be repealed.

Section 100. Optional form of transfer on death deed. This new section provides an optional form for a transfer on death deed. Unlike existing Montana law, the back of the form prescribed in this section includes a number of frequently asked questions about the use of transfer on death deeds. The listed questions include:

- What does the Transfer on Death (TOD) deed do?
- How do I make a TOD deed?
- Is the "legal description" of the property necessary?
- How do I find the "legal description" of the property?
- Can I change my mind before I record the TOD deed?
- How do I "record" the TOD deed?
- Can I later revoke the TOD deed if I change my mind?
- How do I revoke the TOD deed after it is recorded?
- I am being pressured to complete this form. What should I do?
- Do I need to tell the beneficiaries about the TOD deed?

The responses to these questions are in plain, easy-to-read English and are contained on the back of the form. The responses are very consumer friendly.

Section 101. Optional form of revocation. This new section provides an optional form for an instrument to revoke a transfer on death deed. Unlike existing Montana law, the back of the form prescribed in this section includes a number of frequently asked questions about the use of the form. The listed questions include:

- How do I use this form to revoke a Transfer on Death (TOD) deed?
- How do I find the "legal description" of the property?
- How do I "record" the form?
- I am being pressured to complete this form. What should I do?
- I have other questions about this form. What should I do?

The responses to those questions are also very readable and consumer friendly.

Section 102. Prior executed and recorded beneficiary deed. This new section would further insure that beneficiary deeds that have been signed and recorded pursuant to existing Montana law, would be respected.

MISCALLEANOUS

Section 103. Disclaimer. This section would modify Mont. Code Ann. § 72-4-401 by deleting a reference to existing law, which would be repealed by this bill, and replacing the reference with the relevant bill section numbers.

Section 104. Compensation of public administrator. This amendment to Mont. Code Ann. § 72-15-301 accommodates the new provisions concerning the compensation of personal representatives as set forth in bill Section 75, which amends Mont. Code Ann. § 72-3-631.

Section 105. Directions to the code commissioner.

Section 106. Codification instruction.

Section 107. Repealer. The section-by-section descriptions above explain why the following sections of Mont. Code Ann. would be repealed: §§ 72-2-124, 72-2-221, 72-2-222, 72-2-224, 72-2-226, 72-2-227, 72-2-811, 72-3-113, 72-3-309, 72-3-633, 72-6-121, and 72-6-123.

Mont. Code Ann. § 72-2-215 would be repealed because it is inconsistent with Mont. Code Ann. § 72-2-121. The latter section permits aliens to inherit.

This repealer section should be modified by deleting the reference to Mont. Code Ann. § 72-2-715 in light of the Senate amendments to the original bill. See comment to Section 33 above.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 66th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: Chair Alan Doane, on April 4, 2019 at 8:00 AM, in Room 137 Capitol

ROLL CALL

Members Present:

Rep. Alan Doane, Chair (R)
Rep. Kathy Kelker, Vice Chair (D)
Rep. Barry Usher, Vice Chair (R)
Rep. Seth Berglee (R)
Rep. Bob Brown (R)
Rep. Greg DeVries (R)
Rep. David Dunn (R)
Rep. Connie Keogh (D)
Rep. Theresa Manzella (R)
Rep. Zac Perry (D)

Members Excused:

Rep. Terry Moore (R)
Rep. Laurie Bishop (D)
Rep. Jasmine Krotkov (D)
Rep. Barbara Bessette (D)
Rep. Robert Farris-Olsen (D)
Rep. Dennis R. Lenz (R)
Rep. Derek Skees (R)
Rep. Shane A. Morigeau (D)
Rep. Casey Knudsen (R)

Members Absent: None

Staff Present: Abigail Konen, Committee Clerk
Rachel Weiss, Legislative Branch

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted: SB 229, 3/22/2019
Executive Action: SB 229, SB 40, SB 155, SB 213, SB 225, SB 255, SB 286,
SB 304

08:01:40 Chair Doane
08:01:46 Rep. Farris-Olsen entered the meeting.
08:01:50 Rep. Bessette entered the meeting.
08:01:54 Rep. Bishop entered the meeting.
08:02:20 Rep. Krotkov entered the meeting.

HEARING ON SB 229

Opening Statement by Sponsor:

08:02:04 Sen. Brian Hoven (R), SD 13, opened the hearing on SB 229, Limit liability of private educational programs in admitting certain criminals.

Proponents' Testimony:

08:03:29 Rep. T. Moore entered the meeting.
08:05:40 Rep. Skees entered the meeting.
08:06:31 Rep. Morigeau entered the meeting.
08:06:36 Rep. C. Knudsen entered the meeting.
08:06:48 Steve Cape, Montana Coalition for Safety and Justice (MTC4SJ)

Opponents' Testimony:

08:11:22 Al Smith, Montana Trial Lawyers Association (MTLA)

Informational Testimony:

None

Questions from Committee Members and Responses:

08:18:50 Vice Chair Kelker
08:19:14 Sen. Hoven
08:19:23 Steve Cape, MTC4SJ
08:20:58 Chair Doane
08:21:09 Steve Cape, MTC4SJ
08:21:50 Rep. C. Knudsen
08:22:15 Steve Cape, MTC4SJ

Closing by Sponsor:

08:23:08 Sen. Hoven

08:25:25 Chair Doane
08:30:42 Rachel Weiss, Legislative Services Division (LSD)

[EXHIBIT\(juh70a01\)](#)

08:32:55 Chair Doane

08:33:44 Recessed
10:02:05 Reconvened

10:02:05 Rep. Lenz entered the meeting.

EXECUTIVE ACTION ON SB 229

10:02:24 **Motion:** Vice Chair Usher moved that **SB 229 BE CONCURRED IN.**

Discussion:

10:02:51 Vice Chair Kelker

10:03:33 Rep. C. Knudsen

10:04:09 **Vote:** Motion failed 4-15 by roll call vote with Rep. Bessette, Rep. Bishop, Vice Chair Kelker and Rep. Krotkov voting aye.

10:04:58 **Motion/Vote:** Without objection, Vice Chair Usher moved **TO TABLE SB 229.** Motion passed.

EXECUTIVE ACTION ON SB 40

10:05:11 **Motion:** Vice Chair Usher moved that **SB 40 BE CONCURRED IN.**

Discussion:

10:05:18 Vice Chair Kelker

10:05:50 Chair Doane

10:06:25 Rep. Skees

10:06:52 Rep. Morigeau

10:07:19 Vice Chair Usher

10:07:40 Rep. Skees

10:08:16 Chair Doane

10:08:20 Rep. Morigeau

10:08:35 **Vote:** Motion carried 12-7 by roll call vote with Rep. B. Brown, Rep. DeVries, Rep. Dunn, Rep. Lenz, Rep. Manzella, Rep. T. Moore and Rep. Skees voting no. Chair Doane will carry the bill.

EXECUTIVE ACTION ON SB 155

10:09:53 **Motion:** Vice Chair Usher moved that **SB 155 BE CONCURRED IN.**

10:10:09 **Motion:** Rep. Skees moved that **SB 155 BE AMENDED.**

EXHIBIT(juh70a02)

Discussion:

10:10:20 Rep. Skees

10:11:09 Rachel Weiss, Legislative Services Division (LSD)

10:11:28 Rep. Manzella

10:12:02 Rep. Morigeau

10:13:07 Vice Chair Kelker

10:13:41 Rep. Morigeau

10:14:22 Vice Chair Kelker

10:14:24 Rep. Morigeau

10:14:33 Chair Doane

10:15:01 **Vote:** Motion failed 6-13 by roll call vote with Rep. Berglee, Rep. B. Brown, Rep. DeVries, Rep. Manzella, Rep. T. Moore and Rep. Skees voting aye.

10:16:15 **Vote:** Motion carried 11-8 by roll call vote with Rep. Besette, Rep. Bishop, Chair Doane, Rep. Farris-Olsen, Rep. C. Knudsen, Rep. Krotkov, Rep. T. Moore and Rep. Skees voting no. Rep. Manzella will carry the bill.

EXECUTIVE ACTION ON SB 213

10:17:40 **Motion:** Vice Chair Usher moved that **SB 213 BE CONCURRED IN.**

Discussion:

10:17:52 Vice Chair Kelker

10:18:30 Rep. Berglee

10:18:51 **Vote:** Motion carried 18-1 by voice vote with Chair Doane voting no. Rep. Besette will carry the bill.

EXECUTIVE ACTION ON SB 225

10:19:43 **Motion:** Vice Chair Usher moved that **SB 225 BE CONCURRED IN.**

Discussion:

10:19:50 Vice Chair Kelker

10:20:50 Rep. Skees

10:21:14 **Motion:** Rep. Farris-Olsen moved that **SB 225 BE AMENDED.**

EXHIBIT(juh70a03)

Discussion:

10:21:28 Rachel Weiss, LSD

10:23:25 Vice Chair Kelker

10:24:15 **Vote:** Motion carried 18-1 by voice vote with Rep. Skees voting no.

10:24:27 **Motion/Vote:** Vice Chair Usher moved that **SB 225 BE CONCURRED IN AS AMENDED.** Motion carried 16-3 by roll call vote with Rep. DeVries, Rep. Lenz and Rep. Skees voting no. Rep. Mercer will carry the bill.

EXECUTIVE ACTION ON SB 255

10:26:09 **Motion:** Vice Chair Usher moved that **SB 255 BE CONCURRED IN.**

Discussion:

10:26:19 Vice Chair Kelker

10:27:13 **Vote:** Motion carried unanimously by voice vote. Rep. Krotkov will carry the bill.

EXECUTIVE ACTION ON SB 286

10:28:02 **Motion:** Vice Chair Usher moved that **SB 286 BE CONCURRED IN.**

10:28:09 **Motion:** Rep. C. Knudsen moved that **SB 286 BE AMENDED.**

EXHIBIT(juh70a04)

Discussion:

10:28:25 Rep. C. Knudsen

10:28:47 Rep. Morigeau

10:29:02 Rep. Krotkov

10:29:07 Rep. C. Knudsen

10:29:21 **Vote:** Motion carried unanimously by voice vote.

10:29:39 **Motion/Vote:** Vice Chair Usher moved that **SB 286 BE CONCURRED IN AS AMENDED.** Motion carried 16-3 by roll call vote with Rep. B. Brown, Rep. DeVries and Rep. Lenz voting no. Rep. Perry will carry the bill.

EXECUTIVE ACTION ON SB 304

10:31:15 **Motion:** Vice Chair Usher moved that **SB 304 BE CONCURRED IN.**

Discussion:

10:31:29 Vice Chair Kelker

10:31:45 Rep. Skees left the meeting.

10:32:03 **Vote:** Motion carried 10-9 by roll call vote with Rep. Bessette, Rep. Bishop, Chair Doane, Rep. Farris-Olsen, Vice Chair Kelker, Rep. Keogh, Rep. Krotkov, Rep. Morigeau and Rep. Perry voting no. Rep. Skees voted by proxy. Rep. Berglee will carry the bill.

10:33:22 Chair Doane

10:33:33 Vice Chair Usher

10:33:58 Chair Doane

10:34:21 Vice Chair Kelker

10:34:30 Chair Doane

ADJOURNMENT

Adjournment: 10:34:49

Abigail Konen, Clerk

ak

Additional Documents:

EXHIBIT([juh70aad.pdf](#))

Amendments to Senate Bill No. 225
3rd Reading Copy

Requested by Senator Steve Fitzpatrick

For the House Judiciary Committee

Prepared by Rachel Weiss
April 1, 2019 (11:34am)

1. Title, page 1, line 11.

Strike: "72-6-213,"

2. Page 1, line 13.

Strike: "72-2-715,"

3. Page 23, line 18.

Strike: "(1)(b)"

Insert: "(1)(c)"

4. Page 37, line 1 through page 38, line 28.

Strike: section 33 in its entirety

Renumber: subsequent sections

5. Page 52, line 8.

Strike: "40 THROUGH 56"

Insert: "39 through 55"

6. Page 52, line 11.

Strike: "40 THROUGH 56"

Insert: "39 through 55"

7. Page 53, line 6.

Strike: "40 THROUGH 56"

Insert: "39 through 55"

8. Page 53, line 9.

Strike: "40 THROUGH 56"

Insert: "39 through 55"

9. Page 53, line 10.

Strike: "40 THROUGH 56"

Insert: "39 through 55"

10. Page 53, line 11.

Insert: "40 THROUGH 56"

Insert: "39 through 55"

11. Page 53, line 12.

Strike: "40 THROUGH 56"

Insert: "39 through 55"

12. Page 53, line 13.

Strike: "40 THROUGH 56"

Insert: "39 through 55"

13. Page 53, line 28.

Strike: "51"

Insert: "50"

14. Page 54, line 6.

Strike: "51"

Insert: "50"

15. Page 54, line 7.

Strike: "45 THROUGH 50"

Insert: "44 through 49"

16. Page 54, line 8.

Strike: "40 THROUGH 56"

Insert: "39 through 55"

17. Page 54, line 16.

Strike: "46 OR 47"

Insert: "45 or 46"

18. Page 58, line 21 through line 22.

Strike: "40" on line 21 through "56" on line 22

Insert: "39 through 55"

19. Page 58, line 25.

Strike: "40 THROUGH 56"

Insert: "39 through 55"

20. Page 58, line 29.

Strike: "40 THROUGH 56"

Insert: "39 through 55"

21. Page 59, line 2 through line 3.

Strike: "40" on line 2 through "56" on line 3

Insert: "39 through 55"

22. Page 59, line 8.

Strike: "51(7)(B)"

Insert: "50(7)(b)"

23. Page 59, line 12.

Strike: "52"

Insert: "51"

24. Page 59, line 13.

Strike: "40 THROUGH 56"

Insert: "39 through 55"

25. Page 59, line 17.

Strike: "40 THROUGH 56"

Insert: "39 through 55"

26. Page 74, line 22.

Strike: "86"

Insert: "84"

27. Page 76, line 21 through page 77, line 5.

Strike: section 84 in its entirety

Renumber: subsequent sections

28. Page 77, line 7.

Strike: "85 THROUGH 102"

Insert: "83 through 100"

29. Page 77, line 10.

Strike: "85 THROUGH 102"

Insert: "83 through 100"

30. Page 77, line 24.

Strike: "85 THROUGH 102"

Insert: "83 through 100"

31. Page 77, line 28.

Strike: "85 THROUGH 102"

Insert: "83 through 100"

32. Page 79, line 25.

Strike: "83"

Insert: "82"

33. Page 80, line 19.

Strike: "40 THROUGH 56"

Insert: "39 through 55"

34. Page 80, line 23.

Strike: "83"

Insert: "82"

35. Page 80, line 26.

Strike: "85 THROUGH 102"

Insert: "83 through 100"

36. Page 83, line 9.

Strike: "85 through 102"

Insert: "83 through 100"

37. Page 83, line 10.

Strike: "85 THROUGH 102"

Insert: "83 through 100"

38. Page 84, line 28.

Strike: "85 THROUGH 102"

Insert: "83 through 100"

39. Page 85, line 19.

Strike: "48 AND 49"

Insert: "47 and 48"

40. Page 86, line 17 through line 18.

Strike: subsection (4) in its entirety

Renumber: subsequent subsections

41. Page 86, line 19.

Strike: "38 THROUGH 56"

Insert: "37 through 55"

42. Page 86, line 20 through line 21.

Strike: "38" on line 20 through "56" on line 21

Insert: "37 through 55"

43. Page 86, line 24.

Strike: "64"

Insert: "63"

44. Page 86, line 25.

Strike: "64"

Insert: "63"

45. Page 86, line 26.

Strike: "73"

Insert: "72"

46. Page 86, line 27.

Strike: "73"

Insert: "72"

47. Page 86, line 28.

Strike: "83"

Insert: "82"

48. Page 86, line 29.

Strike: "83"

Insert: "82"

49. Page 86, line 30.

Strike: "85 THROUGH 102"

Insert: "83 through 100"

50. Page 87, line 1.

Strike: "85 THROUGH 102"

Insert: "83 through 100"

51. Page 87, line 12.

Strike: line 12

- END -